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6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR AND IN THE COUNTY OF LOS ANGELES

9 CHURCH OF SCIENTOLOGY OF)
10 CALIFORNIA, a California)
Corporation,)
11)
Plaintiff,)
12)
vs.)
13)
GERALD ARMSTRONG; et al.,)
14)
Defendants.)
15)

No. C 420 153

DEFENDANT AND CROSS-
COMPLAINANTS' OPPOSITION
NOTICE OF MOTION AND
MOTION TO ENFORCE
SETTLEMENT AGREEMENT; FOR
LIQUIDATED DAMAGES AND TO
ENJOIN FUTURE VIOLATIONS

16 _____)
GERALD ARMSTRONG,)
17)
Cross-Complainant,)
18)
vs.)
19)
CHURCH OF SCIENTOLOGY OF)
20 CALIFORNIA, a California)
Corporation, et al.,)
21)
Cross-Defendants.)
22)
23 _____)

[FILED UNDER SEAL]

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1 **I. INTRODUCTION**

2 Cross-Defendants Church of Scientology of California, Church
3 of Scientology International and Religious Technology Center
4 (hereinafter collectively referred to as "Scientology") request
5 this Court to enforce particular provisions of a certain
6 settlement agreement against Gerald Armstrong ("Armstrong"). This
7 request must be denied because on multiple occasions Scientology
8 has violated the very terms and conditions which it would have
9 this Court enforce and impose upon Armstrong. Moreover, for the
10 Court to enforce and impose such terms would violate the keymost
11 function of the judiciary - to serve as a forum for the
12 ascertainment of truth - because such terms are for the purpose of
13 the suppression of discreditable facts and thus constitute an
14 obstruction of justice which interferes the administration of the
15 Court's own processes.

12 **II. STATEMENT OF FACTS**

13 On December 6, 1986, Scientology and Armstrong entered into a
14 "Mutual Release of All Claims and Settlement Agreement"
15 ("agreement"). Cross-defendants' Ex. A. The agreement applied to
16 Armstrong vs Church of Scientology of California, LASC No. 420153
17 whereby Armstrong released his claims against all Scientology-
18 affiliated organizations, Id., ¶ 1, and received an unspecified
19 sum of money paid to attorney Michael J. Flynn for the settlement
20 of the claims of all Flynn's clients against Scientology in a
21 "block settlement," Id., ¶ 3. Moreover, "[f]or and in
22 consideration of the above described consideration, the mutual
23 covenants, conditions and release contained herein" Id. ¶ 4,
24 Armstrong agreed to file a dismissal of his case against
25 Scientology with the understanding that the release and the terms
26 thereof did not apply to Scientology's appeal of its underlying
27 case against Armstrong that was in the Court of Appeal, Id. ¶
28 4.A, concerning which Armstrong agreed not to in any way contest.
Id. ¶ 4.b. ^{1/}

1 On March 9, 1990, the Second District Court of Appeal
excused Armstrong from compliance with this particular provision.
Pursuant to Evidence Code § 452, this Court is requested to take
judicial notice of Armstrong's motions in the Court of Appeal and
of the appellate court's Order filed March 9, 1990. Exhibit N.

1 "For and in consideration of the mutual covenants, conditions
2 and release contained herein" Scientology generally released
3 Armstrong from all liability for acts up to the date of
4 agreement's execution. Id., ¶ 5. All parties waived their rights
5 pursuant to Civil Code § 1542, Id., ¶ 6, and "[f]urther, the
6 undersigned [there]by agree[d]" Id., ¶ 7, that liability for all
7 claims was expressly denied, Id., ¶ 7.A, that "Plaintiff" agreed
8 to assume liability for any attorney fee, and liens and would hold
9 Scientology harmless therefor, Id., ¶ 7.C. "Plaintiff" also
10 agreed to maintain strict confidentiality and silence with respect
11 to his experiences with, knowledge of and information concerning
12 Scientology and that if he breached the terms of this provision,
13 Scientology would be entitled to \$50,000 liquidated damages for
14 each breach. Id., ¶ 7.D. "Plaintiff" agreed to return to
15 Scientology any Scientology-related materials that he controlled
16 and to assist Scientology to recover such documents including
17 those in United States v. Zolin. ^{2/} Id., ¶ 7.E.

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² Armstrong v. Church of Scientology of California was
also the subject of the Supreme Court in United States v. Zolin
(1989) 109 S.Ct. 2619 in which the Court addressed whether the
attorney-client privilege between Scientology and some of its
attorneys should be abrogated on the basis "that the legal service
was sought or obtained in order to enable or aid the client to
commit or plan to commit a crime or tort." Id. at 2630. In Zolin,
the Supreme Court reversed the Ninth Circuit's ruling in United
States v. Zolin (9th Cir. 1987) 809 F.2d 1411 that the Government
had not made a sufficient showing that there had been "illegal
advice . . . given by [Scientology] attorneys to [Scientology]
officials" to invoke the crime-fraud exception to the attorney-
client privilege. Upon reversing and remanding, the Supreme Court
ordered the Ninth Circuit to review partial transcripts of the
tape recording sought by the IRS in an criminal investigation of
Scientology to determine whether the crime-fraud exception to the
privilege applied. On remand, the Ninth Circuit held:

"The partial transcripts demonstrate that the purpose of the
[Mission Corporate Category Sort Out] project was to cover up past
criminal wrongdoing. The MCCS project involved the discussion and
planning for future frauds against the IRS, in violation of 18
U.S.C. ¶ 371. [citation.] The figures involved in MCCS admit on
the tapes that they are attempting to confuse and defraud the U.S.
Government. The purpose of the crime-fraud exception is to exclude
such transactions from the protection of the attorney-client
privilege." United States v. Zolin (6/20/90) 90 Daily Journal
D.A.R. 6890.

1 "Plaintiff" agreed that he would "not voluntarily assist or
2 cooperate with any person adverse to Scientology in any proceeding
3 against any of the Scientology organizations . . ." Id., ¶ 7.G.
4 "Plaintiff" also agreed "not to testify or otherwise participate
5 in any other . . . proceeding adverse to Scientology . . . unless
6 compelled to do so by lawful subpoena or other lawful process.
7 Plaintiff shall not make himself amenable to service of any such
8 subpoena in a manner which invalidates the intent of this
9 provision. Unless required to do so by such subpoena, Plaintiff
10 agrees not to discuss this litigation or his experiences with or
11 knowledge of the Church with anyone other than members of his
12 immediate family." Id., ¶ 7.H. Finally, "Plaintiff" agreed that
13 he would "not assist or advise anyone . . . contemplating any
14 claim or engaged in litigation or involved in or contemplating any
15 activity adverse to the interests of" Scientology. Id., ¶ 10.
16 "The parties" agreed "to forebear and refrain from doing any act
17 or exercising any right, whether existing now or in the future,
18 which act or exercise is inconsistent with this Agreement." Id.,
19 ¶ 18.E.

20 In 1987, less than one year after the agreement was signed,
21 Scientology distributed a "dead agent" pack attacking Armstrong.
22 ["Armstrong's description of the RPF in Corydon's book can also be
23 viewed in light of Armstrong's numerous false claims and lies on
24 other subject matters."] Exhibit A.

25 On October 5, 1987, Scientology representative Kenneth Long
26 violated the agreement by executing four affidavits in Church of
27 Scientology of California v. Miller, High Court of Justice,
28 Chancery Division, No. 1987 C. No. 6140, wherein Long solely
discussed matters which pertained to his characterizations of
Armstrong's activities that had been at issue in the settled
litigation. His "first affidavit" was 18 pages long, Exhibit B,
his "second affidavit" was 21 pages long, Exhibit C, and "third
affidavit" was 4 pages long. Exhibit D. Long's third affidavit
specifically stated:

Gerald Armstrong has been an admitted agent provocateur
of the U.S. Federal Government who planned to plant
forged documents in [Scientology's] files which would
then be "found" by Federal officials in subsequent
investigation as evidence of criminal activity.

1 Id., ¶ 8. Long's "fourth affidavit" accused Armstrong of
2 violating the Court's sealing orders. Exhibit F, ¶ 16.

3 On or about November 1, 1989, in the case entitled Corydon v.
4 Church of Scientology International, Inc., et al., LASC No.
5 C694401, Scientology attorney Lawrence E. Heller filed a Notice of
6 Motion and Motion of Defendant Author Services, Inc. to Delay or
7 Prevent the Taking of Certain Third Party Depositions by
8 Plaintiff; Memorandum of Points and Authorities; Declarations of
9 Lawrence E. Heller and Howard Schomer in Support Thereof. Exhibit
10 M. In his memorandum, Heller discussed the "block settlement" of
11 which the Armstrong agreement was a part. He stated:

12 One of the key ingredients to completing these
13 settlements, insisted upon by all parties involved, was
14 strict confidentiality respecting: (1) the Scientology ...
15 staff member's experiences with ... Scientology; (2) any
16 knowledge possessed by the Scientology entities concerning
17 those staff members ...; and (3) the terms and conditions
18 of the settlements themselves. Peace has reigned since the
19 time the interested parties entered into the settlements, all
20 parties having exercised good faith in carrying out the terms
21 of the settlement, including the obligations of
22 confidentiality. [Original emphasis.]

23 Id., at 4:9-19. In his sworn declaration, attorney Heller
24 testified:

25 I was personally involved in the settlements which are
26 referred to in these moving papers which transpired some two
27 and one-half years ago. Those settlements concerned well
28 over a dozen plaintiff litigants as well as various Church of
29 Scientology entities . . . Settlement negotiations, which
30 were not supervised by any court, were arduous and, as is
31 often the case in these instances, sometimes contentious.
32 However, a "universal settlement" was ultimately entered into
33 between the numerous parties. The universal settlement
34 provided for non-disclosure of all facts underlying the
35 litigation as well as non-disclosure of the terms of the
36 settlements themselves. **The non-disclosure obligations were
37 a key part of the settlement agreements insisted upon by all
38 parties involved.** [Original emphasis.]

39 Id. at 8:15-9:7.

40 On August 12, 1991, Scientology filed a complaint styled
41 Church of Scientology International v. Xanthos, et al., in United
42 States District Court, Central District of California, No. 91-
43 4301-SVW(Tx). Exhibit I. Therein, Scientology stated:

44 The infiltration of [Scientology] was planned as an
45 undercover operation by the LA CID along with former
46 [Scientology] member Gerald Armstrong, who planned to seed
47 [Scientology] files with forged documents which the IRS could

1 then seize in a raid. The CID actually planned to assist
2 Armstrong in taking over the [Scientology] hierarchy which
would then turn over all [Scientology] documents to the IRS
for their investigation.

3 Id. at 143-10.

4 On or about August 26, 1991, Scientology filed its
5 Supplemental Memorandum in Support of Defendants' Motion to
6 Dismiss Complaint with Prejudice in Aznaran v. Church of
7 Scientology of California, et al. United States District Court,
8 Central District of California, No. CV-88-1786-JMI(Ex). Exhibit
K. Therein Scientology attorney William T. Drescher stated that
in 1984 Armstrong was

9 plotting against ... Scientology ... and seeking out staff
10 members who would be willing to assist him in overthrowing
[Scientology] leadership. [Scientology] obtained information
11 about Armstrong's plans and, through a police-sanctioned
investigation, provided Armstrong with the "defectors" he
12 sought. On November 30, 1984, Armstrong met with one Michael
Rinder, an individual whom Armstrong thought to be one of his
13 "agents" (but who in reality was loyal to [Scientology]). In
the conversation, recorded with written permission from law
14 enforcement, Armstrong stated the following in response to
questions by Mr. Rinder as to whether they had to have actual
15 evidence of wrongdoing to make allegations in Court against
[Scientology's] leadership:

16 ARMSTRONG: They can allege it. They can allege it. They
don't even have -- they can allege it.

17 RINDER: So they don't even have to -- like -- they don't have
to have the documents sitting in front of them and then --

18 ARMSTRONG: Fucking say the organization destroys documents.
19 . . . Where are the -- we don't have to prove a goddamn
thing. We don't have to prove shit; we just have to allege
20 it.

21 (Ex. E, Declaration of Lynn R. Farney, para. 6.) With such a
criminal attitude, Armstrong fits perfectly into Yanny's game
22 plan for the Aznaran case.

23 Id. at 5:11-6:12.

24 **III. SCIENTOLOGY'S OWN BREACHES OF THE AGREEMENT**
HAVE EXCUSED ANY COUNTER-PERFORMANCE THEREOF BY ARMSTRONG

25 **A. Reciprocal Covenants Between Scientology**
And Armstrong To Maintain Confidentiality
Are Implied By The Agreement

26 The principles concerning the interpretation of contracts are
27 well settled. Paramount among these rules are the following:

28 [T]he contract must be construed as a whole and the intention
of the parties must be ascertained from the consideration of

1 the entire contract, not some isolated portion [citations];
2 a contract entered into for the mutual benefit of the parties
3 is to be interpreted so as to give effect to the main purpose
4 of the contract and not to defeat the mutual objectives of
5 the parties [citations]; language which is inconsistent with
6 the objective of the contract shall be rejected [citations].
7 Also, where a contract is susceptible of two interpretations,
8 the courts shall give it such a construction as will make it
9 lawful, operative, definite, reasonable and capable of being
10 carried into effect if it can be done without violating the
11 intention of the parties [citations]. And last, but not
12 least, the court shall avoid an interpretation which will
13 make a contract extraordinary, harsh, unjust, inequitable or
14 which would result in absurdity [citations].

15 County of Marin v. Assessment App. Bd., Marin City (1976) 64
16 Cal.App.3d 316, 325.

17 That which is necessarily implied in the language of a
18 contract is as much a part of it as that which is expressed. Wal-
19 Noon Corp. v. Hill (1975) 45 Cal.App.3d 605, 611-12. A contract
20 includes not only what is expressly stated, but also what is
21 necessarily implied from the language used. Mercer v. Lemmens
22 (1964) 230 Cal.App.2d 167, 171. Where express covenants fail to
23 cover phrases necessary to make workable and meaningful the
24 covenants expressed, implied covenants may be resorted to. Foley
25 v. U.S. Paving Co. (1968) 262 Cal.App.2d 499, 505-06.

26 Stipulations which are necessary to make a contract reasonable are
27 implied in respect to matters as to which the contract manifests
28 no contrary intention. Straus v. North Hollywood Hospital (1957)
150 Cal.App.2d 306, 309 P.2d 541, 545. A fair and reasonable
interpretation of a contractual provision, rather than one leading
to harsh, unreasonable or inequitable results, is always
preferred. Ibid. When the law implies a promise from the terms
of a written contract, the promise is as much a part of the
contract as if it were written out. Amen v. Merced County Title
Co. (1962) 58 Cal.2d 528, 532. Unexpressed provisions of a
contract may be inferred from the writing or from external facts.
California Lettuce Growers v. Union Sugar Co. (1955) 45 Cal.2d
474, 289 P.2d 785, 790. The rules controlling the exercise of
judicial authority to insert implied covenants require several
concurrent conditions: (1) the implication must arise from the
language used or it must be indispensable to effectuate the

1 intention of the parties; ^{3/} (2) it must appear from the
2 language used that it was so clearly within the contemplation of
3 the parties that they deemed it unnecessary to express it;
4 (3) implied covenants can only be justified on the grounds of
5 legal necessity; (4) a promise can be implied only where it may
6 be rightfully assumed that it would have been made if attention
7 had been called to it; and (5) there can be no implied covenant
8 where the subject is completely covered by the contract. Adkins
9 v. Lear, Inc. (1968) 67 Cal.2d 882, 905; Addiego v. Hill (1965)
10 238 Cal.App.2d 842, 847; Walnut Creek Pipe Distrib. v. Gates
11 Rubber Co. (1964) 228 Cal.App.2d 810, 815-16.

12 Both the language of the agreement and the November 1989
13 declaration and memorandum of Scientology attorney Heller
14 illustrate that confidentiality was indispensable to effectuate
15 the intention of both Armstrong and Scientology. Indeed, a review
16 of the agreement makes it clear that both parties desired to
17 terminate their disputatious interactions with one another and
18 leave one another alone. Thus, while the language of paragraphs 7
19 and 10 used the word "Plaintiff," it is apparent that the
20 provisions set forth therein also applied to "Scientology," but
21 that the parties saw no necessity to expressly state such
22 application of said provisions. If the omission had been called
23 to the parties' attention, they would have made said provisions
24 applicable to "Scientology" as well as to "Plaintiff." There is
25 nothing in the agreement that states that Scientology could make
26 whatever statements it wanted to about Armstrong, but that he
27 would have to remain silent no matter what aspersions were cast
28 his way.

Indeed, to impose such a condition would make no sense
because it would allow Scientology to literally re-write history
in order to suit its own ends without any regard to truth or

³ One vital element in the construction of a contract is
the intention of the parties in relation to its execution. When
determining this intention, the court may look to the
circumstances surrounding the making of the agreement, including
the object, nature, and subject matter of the writing, and thereby
place itself for this purpose in the same situation in which the
parties found themselves at the time of contracting. Dunne &
Gaston v. Keltner (1975) 50 Cal.App.3d 560, 564.

1 accuracy. Armstrong's history in the litigation illustrates a
2 profound rejection of any such result. Thus, under the
3 circumstances there is a legal necessity for the Court to imply
4 that the settlement terms were reciprocal because not only would
5 it be grossly unfair to Armstrong since it was never his intent to
6 have his own personal history revised according to the
7 predilections of Scientology, but revisionist litigation is
8 anathema to the role of the Court as the forum wherein truth is
9 sought.

10 The agreement expressly states that Armstrong was not to
11 discuss his knowledge or experience with respect to Scientology.
12 The agreement is silent whether Scientology was prohibited from
13 discussing its knowledge of Armstrong. Therefore, to imply that
14 the parties' intention was for Scientology to be subject to the
15 same confidentiality as was Armstrong does not contravene any
16 express term of the agreement. Thus, to imply reciprocity would
17 not violate the intent of the parties. Indeed, to not imply such
18 a term would violate the expectations of Armstrong and deny him
19 the fruits of his bargain. "If without the implied obligation the
20 fruits of the contract would be denied to one of the parties, the
21 intent that such an obligation should not exist must clearly
22 appear from the express terms of the contract." Bergum v. Weber
23 (1955) 136 Cal.App.2d 389, 288 P.2d 623, 626. ^{4/}

18 **B. Scientology Breached The Implied Covenants of**
19 **Confidentiality And Of Good Faith And Fair Dealing**

20 In addition to the duties imposed upon the parties to a
21 contract by the terms of their agreement, the law implies in every
22 contract a covenant of good faith and fair dealing. Seaman's
23 Direct Buying Service, Inc. v. Standard Oil Co. (1984) 36 Cal.3d
24 752, 768. The implied promise requires each contracting party to
25 refrain from doing anything to impair the right of the other to
26 receive the benefits of the agreement. Betts v. Allstate Ins. Co.

26 ⁴ In the alternative, if the Court were to conclude that
27 the provisions at issue were not reciprocal, Armstrong urges that
28 such provisions are unconscionable as a matter of law. Civil Code
§ 1670.5 (a). Thus, particularly in light of the page limitation
imposed by the Court on this opposition, Armstrong requests an
opportunity to present further evidence as to the setting, purpose
and effect to aid the Court in determining whether said provisions
are unconscionable as a matter of law. Id. at 1670.5 (b).

1 (1984) 154 Cal.App.3d 688, 705. This covenant not only imposes
2 upon each contracting party the duty to refrain from doing
3 anything which would render performance of the contract impossible
4 by any act of his own, but also the duty to do everything that the
5 contract presupposes that he will do to accomplish its purpose.
6 McWilliams v. Holton (1967) 248 Cal.App.2d 447, 451. The precise
7 nature and extent of the duties imposed by such implied promise
8 will depend upon the nature and purpose of the underlying contract
9 and the legitimate expectations of the parties. Tollefson v.
10 Roman Catholic Bishop (1990) 219 Cal.App.3d 843, 854. Thus,
11 regardless of its origin, the covenant of good faith and fair
12 dealing is designed to effectuate the intentions and reasonable
13 expectations of the parties reflected by mutual promises within
14 the contract. Ibid.

15 With respect to the agreement at bar, Scientology acted in
16 bad faith by unfairly depriving Armstrong of the benefit of the
17 bargain of the settlement agreement. Rather than leave its
18 history with Armstrong to rest silently in the past insulated by
19 mutual promises of confidentiality, Scientology resurrected its
20 old conflict with Armstrong when to do so suited whatever was its
21 particular litigation strategy of the moment. Such conduct
22 violates the implied covenant of good faith and fair dealing and
23 excuses counter-performance by Armstrong.

24 **C. Due To Its Breaches, Scientology Cannot Enforce**
25 **Reciprocal Provisions Of The Agreement Against**
26 **Armstrong**

27 A party complaining of a breach of contract is not entitled
28 to recover therefor unless he has fulfilled his obligations. He
who seeks to enforce a contract must show that he has complied
with the conditions and agreements of the contract on his part to
be performed. Pry Corporation of America v. Leach (1960) 177
Cal.App.2d 632, 639. A covenant is a promise to render some
performance. A breach of covenant excuses the other party's
performance. Witkin, 1 Summary of California Law (1987)
Contracts, § 723. Thus, one who himself breaches a contract
cannot recover for a subsequent breach by the other party, Silver
v. Bank of America (1941) 47 Cal.App.2d 639, 118 P.2d 891, 894,
because a party to a contract need not tender performance if the

1 conduct of the other party amounts to a refusal to perform.
2 United California Bank v. Maltzman (1975) 44 Cal.App.3d 41, 52.

3 **IV. THE PROVISIONS OF THE AGREEMENT WHICH SEEK TO**
4 **SUPPRESS EVIDENCE OF DISCREDITABLE FACTS VIOLATE**
5 **PUBLIC POLICY**

6 In addition to the fact the Scientology seeks to impose a
7 contractual standard on Armstrong when it would not require
8 adherence of itself, portions of the agreement are illegal.
9 Specifically, the agreement seeks to remove Armstrong from acting
10 adversely to Scientology in word and deed. Indeed, according to
11 Scientology, not only would Armstrong be precluded from clarifying
12 Scientology's self-serving distortions regarding his past
13 affiliation with the organization, but he also "shall not make
14 himself amenable to service of any such subpoena in a manner which
15 invalidates the intent of this provision." What Scientology is
16 seeking to do is to remove Armstrong, and all others like him,
17 from playing any role in the truth seeking process, whether such
18 process be in the public marketplace of ideas, or in the truth-
19 seeking forum provided by the judiciary. Thus, by eliminating
20 those who are knowledgeable of its history and practices,
21 Scientology seeks, quite literally, to shape public opinion and
22 skew judicial decision-making by writing its own script without
23 regard to the truth.

24 It is a fundamental rule of construction of contracts that
25 all applicable laws in existence when an agreement is made, which
26 laws the parties are presumed to know and have in mind,
27 necessarily enter into the contract and form a part of it without
28 any stipulation to that effect, as if they were expressly referred
to and incorporated in the agreement. People v. Hadley (1967) 257
Cal.App.2d Supp. 871, 881.

In his work Equity Jurisprudence (4th Ed.1918) § 397 at 738,
Professor Pomeroy states:

Whenever a party, who as an actor, sets the judicial
machinery in motion to obtain some remedy, has violated
conscience, good faith, or other equitable principle, in
his prior conduct, then the doors of the court will be
shut against him in limine; the court will refuse to
interfere on his behalf, to acknowledge his right, or to
award him any remedy. [Emphasis added.]

Thus, where a contract is made either (1) to achieve an
illegal purpose, or (2) by means of consideration that is not

1 legal, the contract itself is void. Witkin, Summary of California
2 Law (9th Ed. 1987) Vol. 1, Contracts, § 441 at 396.

3 A party need not plead the illegality as a defense and the
4 failure to do so constitutes no waiver. In fact, the point may be
5 raised at any time, in the trial court or on appeal, by either the
6 parties or on the court's own motion. Id. at § 444, at 397;
7 LaFortune v. Ebie (1972) 26 Cal.App.3d 72, 75 ["When the court
8 discovers a fact which indicates that the contract is illegal and
9 ought not to be enforced, it will, of its own motion, instigate an
10 inquiry in relation thereto."]; Lewis & Queen v. M.M. Ball Sons
11 (1957) 48 Cal.2d 141, 147-148 ["[T]he court has both the power
12 and the duty to ascertain the true facts in order that it may not
13 unwittingly lend its assistance to the consummation or
14 encouragement of what public policy forbids [and] may do so on its
15 own motion."].

16 Thus, the court will look through provisions that may appear
17 valid on their face, and with the aid of parol evidence, determine
18 that the contract is actually illegal or is part of an illegal
19 transaction. Id. 48 Cal.2d at 148 ["[A] court must be free to
20 search out illegality lying behind the forms in which the parties
21 have cast the transaction to conceal such illegality."]; Witkin, §
22 445 at 398.

23 There are two reasons for the rule prohibiting judicial
24 enforcement, by any court, of illegal contracts.

25 [T]he courts will not enforce an illegal bargain or lend
26 their assistance to a party who seeks compensation for
27 an illegal act [because] . . . Knowing that they will
28 receive no help from the courts . . . the parties are
less likely to enter into an illegal agreement in the
first place.

Lewis & Queen, supra, 48 Cal.2d at 149 [308 P.2d at 719].

This rule is not generally applied to secure justice
between parties who have made an illegal contract, but
from regard for a higher interest - that of the public,
whose welfare demands that certain transactions be
discouraged. [Emphasis added.]

Owens v. Haslett (1950) 98 Cal.App.2d 829, 221 P.2d 252, 254.

Illegal contracts are matters which implicate public policy.
Public policy has purposefully been a "vague expression . . .
[that] has been left loose and free of definition in the same
manner as fraud." Safeway Stores v. Hotel Clerks Intn'l Ass.

1 (1953) 41 Cal.2d 567, 575, 261 P.2d 721. Public policy means
2 "anything which tends to undermine that sense of security for
3 individual rights, whether of personal liberty or private
4 property, which any citizen ought to feel is against public
5 policy." Ibid. Therefore, "[a] contract made contrary to public
6 policy may not serve as the foundation of any action, either in
7 law or in equity, [Citation] and the parties will be left where
8 they are found when they come to court for relief. [Citation.]"
Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454,
296 P.2d 554.

9 It is well settled that agreements against public policy
10 and sound morals will not be enforced by the courts. It is a
11 general rule that all agreements relating to proceedings in
12 court which involve anything inconsistent with [the] full and
13 impartial course of justice therein are void, though not open
14 to the actual charge of corruption.

12 Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36;

13 Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492

14 The consideration for a promise must be lawful. Civil Code §
15 1607. Moreover, "[i]f any part of a single consideration for one
16 or more objects, or of several considerations for a single object,
17 is unlawful, the entire contract is void." Civil Code § 1608;
18 Fong v. Miller (1951) 105 Cal.App.2d 411, 414, 233 P.2d 606. "In
19 other words, where the illegal consideration goes to the whole of
20 the promise, the entire contract is illegal." Witkin, § 429 at
21 386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and
22 intention of the parties [to violate public policy] entered so
23 fundamentally into the inception and consideration of the
24 transaction as to render the terms of the contract nonseverable,
25 and it is wholly void."].

23 "Agreements to suppress evidence have long been held void as
24 against public policy, both in California and in most common law
25 jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d
26 829, 836-37. In Brown v. Freese (1938) 28 Cal.App.2d 608, the
27 California Court of Appeal adopted section 557 of the Restatement
28 of the Law of Contracts prohibiting as illegal those agreements
which sought to suppress the disclosure of discreditable facts.
The court stated:

A bargain that has for its consideration the nondisclosure of
discreditable facts . . . is illegal. . . . In many cases

1 falling within the rule stated in the section the bargain is
2 illegal whether or not the threats go so far as to bring the
3 case within the definition of duress. In some cases,
4 moreover, disclosure may be proper or even a duty, and the
5 offer to pay for nondisclosure may be voluntarily made.
6 Nevertheless the bargain is illegal. Moreover, even though
7 the offer to pay for nondisclosure is voluntarily made and
8 though there is not duty to make disclosure or propriety in
9 doing so, a bargain to pay for nondisclosure is illegal.
10 [Emphasis added.]

11 Brown 28 Cal.App.2d at 618!

12 In Allen v. Jordanos' Inc. (1975) 52 Cal.App.3d 160, 125
13 Cal.Rptr. 31, the court did not allow a breach of contract action
14 to be litigated because it involved a contract that was void for
15 illegality. In Allen, plaintiff filed a complaint for breach of
16 contract which he subsequently amended five times. Plaintiff, a
17 union member, was entitled by his collective bargaining agreement
18 to have a fair and impartial arbitration to determine the truth or
19 falsity of the allegations against him of theft and dishonesty.
20 The allegations of the amended complaints stated that there had
21 been an agreement between the parties whereby defendant laid off
22 plaintiff, defendant's employee, and allowed plaintiff to receive
23 unemployment benefits and union benefits. "Defendants also agreed
24 that they would not communicate to third persons, including
25 prospective employers, that plaintiff was discharged or resigned
26 for dishonesty, theft, a bad employment attitude and that
27 defendants would not state they would not rehire plaintiff." Id.
28 at 163. Plaintiff alleged there had been a breach in that
defendants had communicated to numerous persons, including
potential employers and the Department of Human Resources and
Development, that plaintiff was dishonest and guilty of theft and
for that reason had resigned for fear of being discharged for
those reasons, that plaintiff had a bad attitude and that
defendants would not rehire him. Plaintiff alleged as a result of
the breach he suffered a loss of unemployment benefits, union
benefits and earnings. The court held that the plaintiff had
bargained for an act that was illegal by definition, the
withholding of information from the Department of Human Resources
Development. It stated:

The nondisclosure was not a minor or indirect part of
the contract, but a major and substantial consideration
of the agreement. A bargain which includes as part of

1 its consideration nondisclosure of discreditable facts
2 is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618
3 [83 P.2d 82.].) It has long been hornbook law that
4 consideration which is void for illegality is no
5 consideration at all. [Citation.] Id. 52 Cal.App.3d at
6 166.

7 The object of a contract must be lawful. Civil Code § 1550.
8 If the contract has a single object, and that object is unlawful,
9 the entire contract is void. Civil Code § 1598. Civil Code §
10 1667 defines unlawfulness as that which is either "[c]ontrary to
11 an express provision of the law," or is "[c]ontrary to the policy
12 of the express law, though not expressly prohibited" or is
13 "[o]therwise contrary to good morals."

14 Civil Code § 1668 states:

15 All contracts which have for their object, directly or
16 indirectly, to exempt anyone from responsibility for his
17 own fraud, or willful injury to the person or property
18 of another, or violation of law, whether willful or
19 negligent, are against the policy of the law.

20 Since an agreement to suppress evidence or to conceal a
21 witness is illegal, Witkin, § 611 at 550. Penal Code §§ 136,
22 136.1, and 138; Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d
23 308, 196 Cal.Rptr. 871; Tappan v. Albany Brewing Co. (1889) 80
24 Cal. 570, 571-572, and the combined effect of the "global
25 settlement" has been to remove the availability as witnesses of
26 most former high-ranking Scientologists, such can "lead to subtle
27 but deliberate attempts to suppress relevant evidence."
28 Williamson, 21 Cal.3d at 838.

29 **V. THE REQUEST FOR LIQUIDATED DAMAGES
30 AND AN INJUNCTION SHOULD BE DENIED**

31 The validity of a liquidated damages clause must be
32 determined in accordance with the facts and circumstances of each
33 case. Better Food Markets v. American Dist. Tel. Co. (1953) 40
34 Cal.2d 179. Scientology first breached the very provisions which
35 it claims Armstrong breached and for which alleged breach it now
36 seeks liquidated damages. Under these circumstances Scientology
37 is not entitled to such damages. Indeed, the very amount of the
38 damages indicates that such damages are void because they are a
penalty, not because such amount approximate the harm Scientology
claims Armstrong to have perpetrated.

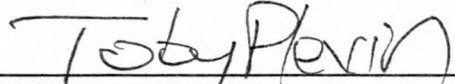
Although Scientology seeks injunctive relief, due to its own

1 violations of the provisions it would seek to enforce, its hands
2 are unclean. London v. Marco (1951) 103 Cal.App.2d 450, 453.
3 Moreover, the public has a First Amendment interest in fair
4 competition in the marketplace of ideas as well as in the fair
5 operation of the judiciary. If Scientology is allowed to suppress
6 evidence so that it can re-write history in its own self-serving
7 manner with no regard for the truth, the public suffers.
8 Alternatively, were the Court to find that liquidated damages are
9 properly applicable in this case, an injunction would be improper
10 because compensation would afford adequate relief. Civil Code §
11 3422.

12 **CONCLUSION**

13 Based upon the foregoing points and authorities, defendant
14 and cross-complainant Gerald Armstrong respectfully submits that
15 Scientology's motion to enforce the settlement agreement should be
16 summarily denied. In the alternative, however, Armstrong submits
17 that the motion before the Court is more akin to a motion for
18 summary judgment on what should have been a properly filed
19 complaint (with an opportunity to take discovery) for breach of
20 contract. Therefore, particularly because there are extremely
21 important rights which this Court must adjudicate, Armstrong
22 requests that the matter be set for a full evidentiary hearing so
23 that the intent of the parties regarding the agreement, and any
24 subsequent breaches thereof, can be ascertained.

25 DATED: November 18, 1991

26
27
28


TOBY L. PLEVIN
Attorney for Cross-Complainant

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 10700 SANTA MONICA BLVD, SUITE 4-300, LOS ANGELES, CALIFORNIA 90025. I served the following documents: DEFENDANT AND CROSS-COMPLAINANTS' OPPOSITION NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT AGREEMENT; FOR FORLIQUIDATED DAMAGES AND TO ENJOIN FUTURE VIOLATIONS SETTLEMENT AGREEMENT; DECLARATION OF GERALD ARMSTRONG IN SUPPORT OF DEFENDANT AND CROSS-COMPLAINANT'S OPPOSITION TO NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT AGREEMENT; FOR LIQUIDATED DAMAGES AND TO ENJOIN FUTURE VIOLATIONS; REQUEST FOR AN EVIDENTIARY HEARING

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at Los Angeles, California:

LAURIE J. BARTILSON
Bowles and Moxon
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at Los Angeles, California.
- (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: November 18, 1991



1 TOBY L. PLEVIN
2 ATTORNEY AT LAW
3 10700 SANTA MONICA BLVD, SUITE 4-300
4 LOS ANGELES, CALIFORNIA 90025
5 (213) 788-8660

6 Attorney for Defendant/Cross-Complainant
7 GERALD ARMSTRONG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR AND IN THE COUNTY OF LOS ANGELES

10 CHURCH OF SCIENTOLOGY OF)
11 CALIFORNIA, a California)
12 Corporation,)

13 Plaintiff,)

14 vs.)

15 GERALD ARMSTRONG; et al.,)

16 Defendants.)

No. C 420 153

DECLARATION OF GERALD
ARMSTRONG IN SUPPORT OF
DEFENDANT AND CROSS-
COMPLAINANT'S OPPOSITION
TO NOTICE OF MOTION AND
MOTION TO ENFORCE
SETTLEMENT AGREEMENT; FOR
LIQUIDATED DAMAGES AND TO
ENJOIN FUTURE VIOLATIONS

17 GERALD ARMSTRONG,)

18 Cross-Complainant,)

19 vs.)

20 CHURCH OF SCIENTOLOGY OF)
21 CALIFORNIA, a California)
22 Corporation, et al.,)

23 Cross-Defendants.)

[FILED UNDER SEAL]

Date: December 3, 1991
Time: 9:00 a.m.
Dept: 56

24 I, Gerald Armstrong, declare and state:

25 1. I am making this declaration to support an opposition to
26 a motion brought by the Scientology organization in the case of
27 Church of Scientology of California v. Armstrong, Los Angeles
28 Superior Court No. C420153 to enforce the settlement agreement I
had entered into with the organization in December 1986. The

1 facts hereinafter set forth are of my own first-hand knowledge.

2 2. I became involved with Scientology as a customer in 1969
3 in Vancouver, B.C. I worked on staff there in 1970 and in
4 February 1971 joined the Sea Organization (SO or Sea Org) in Los
5 Angeles. I was flown to Spain and joined the Sea Org's flag ship,
6 "Apollo," in Morocco. L. Ron Hubbard, the Sea Org's
7 "Commodore," was on board and operated Scientology internationally
8 through the "crew" which numbered, during my stay on board of four
9 and a half years, around four hundred. All my staff positions on
10 board involved personal contact with L. Ron Hubbard, Mary Sue
11 Hubbard, administrative organization staff and people in the ports
12 and countries the "Apollo" visited, and included "Ship's
13 Representative" (legal representative), "Port Captain" (public
14 relations officer), and "Information Officer" (intelligence
15 officer).

16 3. In the fall of 1975 after the ship operation moved
17 ashore in Florida I was posted in the Guardian's Office (GO)
18 Intelligence Bureau connected to Hubbard's Personal Office. From
19 December 1975 through June 1976 I held the post of Deputy LRH
20 External Communications Aide, a relay terminal for Hubbard's
21 written and telex traffic to and from Scientology organizations.
22 From July 1976 to December 1977 I was assigned, on Hubbard's
23 order, to the "Rehabilitation Project Force" (RPF), the SO prison
24 system. In 1978 I worked in Hubbard's cinematography crew in La
25 Quinta, California making movies under his direction until the
26 fall of that year when he again assigned me to the RPF, this time
27 for eight months first in La Quinta, then at a newly purchased
28 base in Gilman Hot Springs near Hemet, California. When I got out
of the RPF in the spring of 1979 and until the beginning of 1980 I

1 worked in Hubbard's "Household Unit" (HU) at Gilman, the SO unit
2 which took care of Hubbard's house, personal effects, transport,
3 meals and so forth, as the "Purchaser," "Renovations In-Charge"
4 and "Deputy Commanding Officer HU."

5 4. Throughout 1980 and until I left the organization in
6 December 1981 I held the organization posts in Hubbard's "Personal
7 Public Relations Bureau" of "LRH Archivist" and "LRH Personal
8 Researcher." I assembled in Los Angeles an archive of Hubbard's
9 writings and other materials relating to his history to be used
10 as, inter alia, the basis for a biography to be written about the
11 man. I also worked in Los Angeles for the first few months of 1980
12 on Mission Corporate Category Sortout (MCCS), which had the
13 purpose of restructuring the Scientology enterprise so that
14 Hubbard could continue to control it without being liable for its
15 actions. (A tape recording of two meetings relating to MCCS's
16 actions subsequently became the subject of Church of Scientology
17 of California v. Zolin.) Beginning in the fall of 1980 and
18 continuing until my departure, I provided the biographical
19 writings and other materials, as I collected and organized them,
20 to Omar Garrison, who had contracted with the organization to
21 write the Hubbard biography. I interviewed many people who had
22 known Mr. Hubbard at periods throughout his life, including almost
23 all of his known living relatives. I traveled several thousand
24 miles collecting biographical information and conducting a
25 genealogy search, and arranged the purchase of a number of
26 collections of Hubbard-related documents and other materials from
27 individual collectors.

28 5. Through my research and study of documentary evidence I
was compelled to conclude that Mr. Hubbard had lied about his

1 past, credentials, accomplishments, relationships and intentions.
2 I obtained evidence which disproved many of the claims made by
3 Hubbard in his biographies printed in Scientology publications and
4 used in promotion of the man and his philosophy and psychotherapy;
5 consequently I attempted to get the organization executives
6 responsible for these publications to correct the disproven
7 claims. As a result I was ordered to be security checked, an
8 invasive interrogation employing an electronic meter as a lie
9 detector, a procedure I had undergone many times in the Sea Org.
10 I had by this time obtained evidence which disproved the
11 significant representations Hubbard had made about himself or his
12 "technology" which had drawn me into and kept me in the
13 organization for over twelve years; e.g., that he was an engineer
14 and an atomic physicist, that he had been crippled and blinded in
15 combat in WW II and had cured himself with his mental science
16 discoveries, that it was a matter of medical record that he had
17 twice been pronounced dead, that his psychotherapy had been
18 subjected to rigorous scientific testing, that it cured all
19 psychosomatic ills and raised IQs a point per hour of therapy (I
20 had by this time had well over a thousand hours), that he had been
21 remunerated for his labors less than staff members were paid (in
22 my case between \$4.30 and \$17.20 per week throughout my 50 years),
23 and that he and his organization were ethical and well-
24 intentioned. When it became clear to me that I was not going to
25 be able to get the organization or Hubbard to admit to the lies
26 and take a more honest path I, and my wife Jocelyn, left the
27 organization.

28 6. Following my departure the organization published a
"Declaration" dated February 18, 1982 labelling me a "Suppressive

1 Person (SP)." An SP is considered in Scientology completely
2 psychotic and destructive, one of the two and a half percent truly
3 evil people on the planet. SPs are viewed as enemies of
4 Scientology and mankind and are targets for the organization's
5 "Fair Game Policy," which states specifically that they may be
6 lied to, cheated, sued and destroyed without discipline of the
7 Scientologist committing such acts. The SP Declare also accused
8 me of "spreading destructive rumors about senior Scientologists."
9 I knew in early 1982 that I was the target of Guardian's Office
10 intelligence operations because certain friends were contacted and
11 interrogated about me by known GO intelligence personnel. The
12 organization also appropriated a set of photographs I had
13 entrusted with an associate, Virgil Wilhite, and when I demanded
14 their return told me to get a lawyer.

15 7. A few days later I met with attorney Michael Flynn who
16 agreed to defend me against the organization, which on April 22,
17 1982 published a second SP declare accusing me of eighteen
18 "crimes, high crimes and suppressive acts," including, inter alia,
19 promulgating false information about Hubbard and the organization.
20 In the late spring and summer of 1982 I obtained from Omar
21 Garrison with his permission some of the documents I had delivered
22 to him while in the organization which I considered I would need
23 to defend myself against the organization's charges in the SP
24 declares and whatever actions they would bring against me in the
25 non-Scientology courts. I sent these to Mr. Flynn and to Contos
26 and Bunch, a California law firm which by then had agreed to
27 represent me in Scientology litigation. The organization filed
28 suit against me in the Los Angeles Superior Court on August 2,
1982 and the Hubbard biography documents I had sent to my lawyers

1 were ordered by the Court to be deposited with the clerk where
2 they stayed until trial in the spring of 1984.

3 8. In August and September 1982 the organization employed a
4 number of private investigators to surveil and harass my wife and
5 me. During that period one of these investigators assaulted me
6 bodily, and another struck my body with a car, and attempted to
7 involve me ⁱⁿ a freeway accident by getting in front of my car and
8 slamming on his brakes and pulling alongside my car and swerving
9 into my lane. The organization also attempted to get the Los
10 Angeles Police Department to bring criminal charges against me in
11 connection with the Hubbard documents which had become the subject
12 of the litigation in the Superior Court.

13 9. I filed a cross-complaint in 1982 against various
14 Scientology corporations which was bifurcated from the underlying
15 document case and never tried because it settled in December 1986.
16 The document case was tried without a jury by Judge Paul G.
17 Breckenridge, Jr. who rendered a decision on June 20, 1984.
18 Between that time and the settlement the organization continued
19 its campaign against me which included at least these acts:

- 20 ▶ attempted entrapment;
- 21 ▶ illegal videotaping;
- 22 ▶ filing false criminal charges against me with the Los
23 Angeles District Attorney;
- 24 ▶ filing false criminal charges against me with the Boston
25 office of the FBI;
- 26 ▶ filing false declarations to bring contempt of court
27 proceedings against me on three occasions;
- 28 ▶ obtaining perjured affidavits from English private
investigators, who had harassed me in London in 1984, accusing me

1 of distributing "sealed" documents;

2 ▶ international dissemination of Scientology publications
3 falsely accusing me of crimes, including crimes against humanity;
4 and

5 ▶ culling and disseminating information from my supposedly
6 confidential auditing (psychotherapy) file.

7 10. On December 5, 1986 I was flown to Los Angeles, as were
8 several other of Mr. Flynn's clients with claims against the
9 organization to participate in a "global settlement." After my
10 arrival in LA I was shown a copy of a document entitled "Mutual
11 Release of All Claims and Settlement Agreement," hereinafter
12 referred to as "the settlement agreement," and some other
13 documents, which I was expected to sign.

14 11. The settlement agreement has now become a public
15 document, and it and its effects are issues in various lawsuits
16 now pending.

17 12. Upon reading the settlement agreement draft I was
18 shocked and heartsick. I told Mr. Flynn that the condition of
19 "strict confidentiality and silence with respect to [my]
20 experiences with the [organization]" (settlement agreement, para.
21 7D), since it involved over seventeen years of my life, was
22 impossible. I told him that the "liquidated damages" clause
23 (para. 7D) was outrageous; that pursuant to the settlement
24 agreement I would have to pay \$50,000.00 if I told a doctor or
25 psychologist about my experiences from those years, or if I put on
26 a resume what positions I had held during my organization years.
27 I told Mr. Flynn that the requirements of non-amenability to
28 service of process (para. 7H) and non-cooperation with persons or
organizations adverse to the organization (paras. 7G, 10) were

1 obstructive of justice. I told him that I felt that agreeing to
2 leave the organization's appeal of the decision in Armstrong and
3 not respond to any subsequent appeals (para. 4B) was unfair to the
4 courts and all the people who had been helped by the decision. I
5 told Mr. Flynn that an affidavit the organization was demanding
6 that I sign along with the settlement agreement was false. That
7 document, which I do not have, stated, inter alia, that my
8 disagreements with the organization had been with prior
9 management, and not with the then-current leadership. In fact
10 there had been no management change and I had the same
11 disagreements with the organization's "fair game" policies and
12 actions which had continued without change up to the time of the
13 settlement. I told him that I was being asked to betray
14 everything and everyone I had fought for against an organization
15 which was based upon injustice.

16 13. In answer to my objections to the settlement agreement,
17 Mr. Flynn said that the silence and liquidated damages clauses,
18 and anything which called for obstruction of justice were not
19 worth the paper they were printed on. He said the same thing a
20 number of times and a number of ways; e.g., that I could not
21 contract away my Constitutional rights; that the conditions were
22 unenforceable. He said that he had advised the organization
23 attorneys that those conditions in the settlement agreement were
24 not worth the paper they were printed on, but that the
25 organization, nevertheless, insisted on their inclusion in the
26 settlement agreement and would not agree to any changes. He
27 pointed out the clauses concerning my release of all claims
28 against the organization to date and its release of all claims
against me to date (paras. 1,4,5,6,8) and said that they were the

1 essential elements of the settlement and were what the
2 organization was paying for.

3 14. Mr. Flynn also said that everyone was sick of the
4 litigation and wanted to get on with their lives. He said that he
5 was sick of the litigation, the threats to him and his family and
6 wanted out. He said that as a part of the settlement he and all
7 co-counsels had agreed to not become involved in organization-
8 related litigation in the future. He expressed a deep concern
9 that the courts in this country cannot deal with the organization
10 and its lawyers and their contemptuous abuse of the justice
11 system. He said that if I didn't sign the documents all I had to
12 look forward to was more years of harassment and misery. One of
13 Mr. Flynn's other clients, Edward Walters, who was in the room
14 with us during this discussion, yelled at me, accusing me of
15 killing the settlement for everyone, and that everyone else had
16 signed or would sign, and everyone else wanted the settlement.
17 Mr. Flynn said that the organization would only settle with
18 everyone together; otherwise there would be no settlement. He did
19 agree to ask the organization to include a clause in my settlement
20 agreement allowing me to keep my creative works relating to L. Ron
21 Hubbard or the organization (para. 7L).

22 15. Mr. Flynn said that a major reason for the settlement's
23 "global" form was to give the organization the opportunity to
24 change its combative attitude and behavior by removing the threat
25 he and his clients represented to it. He argued that the
26 organization's willingness to pay us substantial sums of money,
27 after its agents and attorneys had sworn for years to pay us "not
28 one thin dime" was evidence of a philosophic shift within the
organization. I argued that the settlement agreement evidenced

1 the unchanged philosophy of fair game, and that if the
2 organization did not use the opportunity to transform its
3 antisocial nature and actions toward its members, critics and
4 society I would, a few years hence, because of my knowledge of
5 organization fraud and fair game, be again embroiled in its
6 litigation and targeted for extralegal attacks.

7 16. Regarding the affidavit the organization required that I
8 sign, Mr. Flynn said that the "disagreement with prior management"
9 could be rationalized as being a disagreement with L. Ron Hubbard,
10 and since Mr. Hubbard had died in January 1986 it could be said
11 that I no longer had that disagreement. Mr. Flynn said that the
12 organization's attorneys had promised that the affidavit, which
13 all the settling litigants were signing, would only be used by the
14 organization if I began attacking it after the settlement, and
15 since I had no intention of attacking the organization the
16 affidavit would never see the light of day.

17 17. During my meeting with Mr. Flynn in Los Angeles I found
18 myself facing a dilemma which I reasoned through in this way. If
19 I refused to sign the settlement agreement and affidavit all the
20 other settling litigants, many of whom had been flown to Los
21 Angeles in anticipation of a settlement, would be extremely
22 disappointed and would continue to be subjected to organization
23 harassment for an unknown period of time. I had been positioned
24 in the settlement drama as a deal-breaker and would undoubtedly
25 lose the support of some if not all of these litigants, several of
26 whom were key witnesses in my case against the organization.
27 Although I was certain that Mr. Flynn and my other lawyers would
28 not refuse to represent me if I did not sign the documents I also
knew that they all would view me as a deal-breaker and they would

1 be as disappointed as the other litigants in not ending the
2 litigation they desperately wanted out of. The prospect of
3 continuing the litigation with unhappy and unwilling attorneys on
4 my side, even though my cross-complaint was set for trial within
5 three months, was distressing. On the other hand, if I signed the
6 documents, all my co-litigants, some of whom I knew to be in
7 financial trouble, would be happy, the stress they felt would be
8 reduced and they could get on with their lives. Mr. Flynn and the
9 other lawyers would be happy and the threat to them and their
10 families would be removed. The organization would have the
11 opportunity they said they desired to clean up their act and start
12 anew. I would have the opportunity to get on with the next phase
13 of my life and the financial wherewithal to do so. I was also not
14 unhappy to at that time not have to testify in all the litigation
15 nor to respond to the media's frequent questions. If the
16 organization continued its fair game practices toward me I knew
17 that I would be left to defend myself and I accepted that fact.
18 So, armed with Mr. Flynn's advice that the conditions I found so
19 offensive in the settlement agreement were not worth the paper
20 they were printed on, and the knowledge that the organization's
21 attorneys were also aware of that legal opinion, I put on a happy
22 face and the following day went through the charade of a
23 videotaped signing.

24 18. It was my understanding and intention at the time of the
25 settlement that I would honor the silence and confidentiality
26 conditions of the settlement agreement, and that the organization
27 had agreed to do likewise.

28 19. Following the December 1986 settlement the organization
continued its fair game campaign against me in violation of the

1 spirit and letter of the settlement agreement. I detailed the
2 post-settlement violations I knew about in my declaration of March
3 15, 1990, which was filed in the Court of Appeal as an exhibit to
4 a document entitled "Defendant's Reply to Appellants' Opposition
5 to Petition for Permission to File Response and for Time" and
6 served on the Los Angeles Superior Court on March 24, 1990, and my
7 declaration of December 25, 1990, which was filed in the Court of
8 Appeal as "Defendant's Appendix" to "Defendant's Brief" and served
9 on the Los Angeles Superior Court on December 28, 1990. I request
10 that this Court take Judicial Notice of these declarations and the
11 exhibits thereto as they are part of the record in this case.

12 20. The organization's violations of the settlement
13 agreement include at least:

14 a) Use in 1987 of my name and a false and unfavorable
15 description of my organizational experiences in a "dead agent"
16 pack relating to Bent Corydon, pages 11, 12, 18 and 29 from which
17 are attached hereto true and correct copies as Exhibit A;

18 b) Filing several false affidavits, attached herewith are
19 true and correct copies as Exhibit B (Kenneth David Long's First
20 Affidavit dated October 5, 1987), Exhibit C (Kenneth Long's Second
21 Affidavit dated October 5, 1987), Exhibit D (Kenneth Long's Third
22 Affidavit dated October 5, 1987), Exhibit E (Sheila MacDonald
23 Chaleff's First Affidavit dated October 5, 1987), Exhibit F
24 (Kenneth Long's Fourth Affidavit dated October 7, 1987), and
25 Exhibit G (Kenneth Long's Fifth Affidavit dated October 8, 1987)
26 in the case of Church of Scientology of California v. Russell
27 Miller and Penguin Books Limited, Case no. 6140 in the High Court
28 of Justice in London England, accusing me of violations of court
orders in the Armstrong case, and labeling me "an admitted agent

1 provocateur of the U.S. Federal Government;"

2 c) Delivering a copy of an edited version of the 1984
3 illegal videotape of me, a photocopy of the cassette for which
4 showing the business card of organization private investigator
5 Eugene Ingram is attached herewith is a true and correct copy as
6 Exhibit H, to the London Sunday Times;

7 d) Threatening me with lawsuits on six occasions as set
8 forth in my March 15, 1990 and December 25, 1990 declarations of
9 which I have asked the Court to take judicial notice, above;

10 e) Threatening to release a description of a dream I had
11 had, and which the organization had stolen from a friend of mine,
12 if I did not assist them in preventing Bent Corydon from gaining
13 access to the Armstrong court file;

14 f) Using my name and a false rendition of the
15 organization's 1984 videotape operation where they attempted to
16 entrap me into the commission of a crime in the Complaint filed in
17 the case of Church of Scientology International v. 17 Agents, Case
18 No. 91-4301 SVW filed August 12, 1991 in US District Court,
19 Central District of California, page 14 from which is attached
20 herewith is a true and correct copy as Exhibit I;

21 g) Using the same false rendition of the 1984 "Armstrong
22 Operation," perjurious declarations by organization lawyers and a
23 general attack on my character and truthfulness in various
24 pleadings filed in August 1991 in the case of Aznaran v. Church of
25 Scientology of California, et al, No. CV 88-1786 JMI in U.S.
26 District Court, Central District of California. Exhibit J is a
27 true and correct copy of pages 2, 3, 33, and 34 of "Reply in
28 Support of Defendants' Motion for Summary Judgment Based on the
Statute of Limitations." Exhibit K is a true and correct copy

1 which comprises pages 4, 5, and 6 of "Supplemental Memorandum in
2 Support of Defendants' Motion to Dismiss Complaint with
3 Prejudice." Exhibit L is a true and correct copy of pages 2 - 5
4 and pages 9 and 10 (the declaration of attorney Laurie J.
5 Bartilson dated August 27, 1991) of "Defendants' Opposition to Ex
6 Parte Application to File Plaintiffs' Genuine Statement of Issues
7 [sic] re Defendants' Motions (1) to Exclude Expert Testimony; and
8 (2) for Separate Trial on Issues of Releases and Waivers; Request
9 that Opposition Be Stricken." I have included only a few pages
10 from these documents in the interest of economy, but will file the
11 complete documents if the Court wishes. The organization has
12 included my declaration of September 3, 1991 "Regarding Alleged
13 'Taint' of Joseph A. Yanny, Esquire", also filed in the Aznaran
14 case in response to its allegations in these pleadings, as Exhibit
15 N to its motion to enforce the settlement.

16 21. Attached hereto as Exhibit M is a true and correct copy
17 of a Notice of Motion and Motion of Defendant Author Services,
18 Inc. to Delay or Prevent the Taking of Certain Third Party
19 Depositions by Plaintiff; Memorandum of Points and Authorities;
20 Declarations of Lawrence E. Heller and Howard Schomer in Support
21 Thereof filed on or about November 1, 1989 in the case entitled
22 Corydon v. Church of Scientology International, Inc., et al., LASC
23 No. C694401.

24 22. In late 1987 I received a telephone call from a reporter
25 for the London Sunday Times who told me that the organization had
26 delivered to the newspaper a stack of documents concerning me,
27 including materials from the 1984 illegal videotape "Armstrong
28 Operation," and he asked me to comment about them. I was greatly
saddened by this news, but told the reporter only that I

1 considered the organization's action a violation of its agreement
2 with me and I would not comment further.

3 23. When I was threatened in 1988 with exposure of the
4 stolen dream recitation (see 3-15-90 declaration, para. 40), I
5 considered I was being blackmailed. In the hope that by my
6 example I would deter further such conduct, I did not violate the
7 settlement agreement. I learned this past August 1991 in
8 Johannesburg, South Africa that the organization had given a copy
9 of the dream recitation, which had been specifically sealed in the
10 Armstrong litigation, to its representatives in that country.

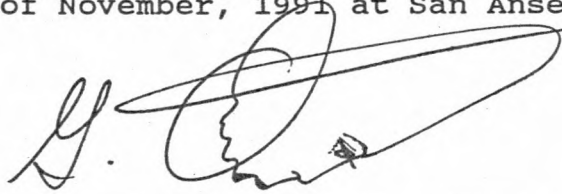
11 24. When I had several times been threatened by organization
12 attorney Larry Heller that I would be sued if I did not obstruct
13 justice as directed by the organization, and when it had become
14 obvious to me that I could not avoid a confrontation with the
15 organization (see 3-15-90 declaration, paras. 4-8, 44) did I
16 respond to defend myself and to correct the injustices created by
17 the settlement agreement and the organization's violations
18 thereof.

19 25. The first action I took was to file on February 28, 1990
20 in the California Court of Appeal, Second Appellate District, in
21 the appeal the organization had maintained from the June 20, 1984
22 decision in Armstrong, a document entitled Respondent's Petition
23 for Permission to File Response and for an Extension of Time to
24 File Response," attached hereto as Exhibit N. I did so in part
25 because in my research of my rights following my recognition that
26 I could not avoid involvement I discovered that my agreement to
27 not respond pursuant to the settlement contract was an obstruction
28 of justice. After the Court of Appeal granted my petition on
March 9, 1990, I did thereafter file a respondent's brief.

1 Thereafter, on July 29, 1991 an opinion issued in that appeal
2 upholding the trial court's decision on the merits.

3 I declare under the penalty of perjury under the laws of the
4 State of California that the foregoing is true and correct.

5 Executed this 17th day of November, 1991 at San Anselmo,
6 California.

A handwritten signature in black ink, appearing to read 'G. Armstrong', is written over a horizontal line. The signature is stylized and somewhat cursive.

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Gerald Armstrong

After an initial 10% of the income has been deducted for research, and an additional 10% taken to operate as a reserve, the remaining 80% is allocated into the categories of 31% to salaries, 4% for payroll deductions, 17% for building expenses, 21% for organizational expenses and 7% to commissions.

It is ridiculous to think that the Church's Flag Land Base, which is composed of hundreds of staff in a number of different buildings, and which delivers Scientology counselling and training to thousands of parishioners on a weekly basis, would be able to cover its expenses using only 10 percent of its weekly income.

Corydon goes on to say that tens of millions of dollars paid for services delivered to Church members at the Flag organization were channeled into Hubbard's personal accounts.

There is no documentation to support this statement by Corydon. In fact, his claims are based on nothing more than hearsay, rumor and lies gathered from a small cabal of thieves, perjurers and disreputable sources.

Mr. Hubbard hardly needed any income from the Church of Scientology. As one of the most prolific and popular authors in history, his income speaks for itself. L. Ron Hubbard's career as a writer spanned more than 50 years, with over 22 million copies of his fiction books sold.

Since October 1982, there have been over 1,900,000 of Mr. Hubbard's fiction books sold. In 1985 and 1986 alone, 3,907,522 nonfiction books by L. Ron Hubbard were sold.

An unprecedented event in publishing history, L. Ron Hubbard's "Dianetics: The Modern Science of Mental Health," originally published in 1950 and carried on the prestigious New York Times best-seller list, returned to the New York Times list for over six months in 1986 and 1987. Mr. Hubbard's income from the royalties on sales of his extremely popular books is self-explanatory.

Not only was Mr. Hubbard not making his income from the Church of Scientology, but he also gave the majority of his estate to the Church in his will.

COMBAT IN WORLD WAR II

John Sanborne, one of Corydon's main sources for this book, claims that L. Ron Hubbard had not been in combat during World War II.

However, an Action Report from May 1943 shows that L. Ron Hubbard, as the Commanding Officer of the submarine chaser PC 815, engaged in direct combat with two submarines off the coast of Oregon.

TRAVELS IN ASIA

Gerry Armstrong, another one of Corydon's main sources in the book, claims that L. Ron Hubbard " ... did not spend several years throughout Asia," and that Mr. Hubbard's total time in Asia was "a few weeks."

L. Ron Hubbard, in fact, was in Asia and the Orient several times during a three-year period, during which his travels were quite extensive.

Chapter 8

HOMER SCHOMER -----

Homer Schomer is a good example of the discreditable sources Corydon used for his book.

Schomer, a former Scientologist and staff member, was proven to be a perjurer during his testimony in a court case between the Church of Scientology and Julie Christofferson in 1985.

Homer had testified in 1984 in a court case brought by the Church of Scientology against Gerald Armstrong (a former staff member who had stolen valuable documents from Church archives).

In the Christofferson case, Schomer admitted to having committed perjury in the previous Armstrong case.

In 1984, Schomer also attempted to extort money from the Church of Scientology. In sworn affidavits, two Church staff members testified that when they met with Schomer in his own home in an attempt to help him reconcile his differences with the Church, Schomer offered to "stay quiet" about information that he felt could be damaging to the Church, if the Church paid him the exorbitant sum of \$200,000.00.

Schomer was also involved in passing stolen sacred and confidential Church scriptures to the Los Angeles law firm of Charles O'Reilly. In a hearing in the Church of Scientology's lawsuit on this matter, it was clearly shown that Schomer had provided copies of the stolen materials to O'Reilly's firm.

The materials were originally stolen in Denmark by an apostate former member of the Church and were then disseminated to the United States.

In the above-mentioned hearing, the judge precluded any further use and dissemination of the stolen Church scriptures. (See chapter entitled "David Mayo.")

Schomer's record as a perjurer, extortionist and thief has been disregarded by Corydon, who apparently could find no better "sources" for his book.

Chapter 14

REHABILITATION PROJECT FORCE

Corydon devotes a chapter in his book to the Church of Scientology's Rehabilitation Project Force (RPF). In this chapter, he includes such statements as the claim that individuals on the RPF are "slaves who eat scraps" and have "the look of hunted animals."

This perhaps would be a fine piece of sensational writing for the National Enquirer, but such a description of the Rehabilitation Project Force is a complete fabrication.

Corydon has used a description of the RPF provided by Gerry Armstrong, among others. Armstrong's description in this book, however, is completely contrary to his own previous sworn affidavit about the RPF.

(Gerry Armstrong's description of the RPF in Corydon's book can also be viewed in light of Armstrong's numerous false claims and lies on other subject matters: See chapter on Corydon as an "author" for further information on Gerry Armstrong's incompetence as a researcher.)

The Rehabilitation Project Force, as its name indicates, is a program with the purpose of rehabilitating individuals.

It is not uncommon for executives in high-pressure jobs in the business world to suffer from "burnout" and be totally unable to continue with their jobs. In the Sea Organization, if an individual is unable to keep up with the demands of his job or if he continually transgresses against the policies of his group, steps are taken to help the person so that he again becomes a contributing member of his organization. There are many different actions and programs which aide a Church staff member in this way. One of these is the Rehabilitation Project Force.

Individuals who go to the RPF do so of their own free will. If someone chooses not to do the RPF, he is free to leave. The fact is that those who are desirous of working in the Church and are interested in improving themselves (which is the very essence of what Scientology is all about), join the Rehabilitation Project Force by their own choice.

Individuals on the Rehabilitation Project Force receive extensive spiritual counseling. In exchange, they do work such as landscaping, building renovations and so forth.

EXHIBIT B

Deponent: Kenneth David Long
Deponent's First Affidavit
Sworn on 5th October 1987
In support of Plaintiff
Resworn on 7th October 1987

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No.6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED Defendants

AFFIDAVIT
OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for 11 years, and a member of the Church's staff for 7 years. I am employed by the Church of Scientology of California (hereinafter called "the Church") which is a non-profit

making religious corporation registered in California since 1954. My duties for the past 5 years have required that I work closely with and assist Church counsel in all phases of litigation in the United States, including the Church's litigation with Gerald D. Armstrong.

2. I have caused to be reviewed a manuscript of approximately 375 pages and entitled "Bare-Faced Messiah" by Russell Miller. There is now produced and shown to me marked "KDL 1" a copy of Mr. Miller's manuscript. This book contains direct quotes from unpublished writings of L. Ron Hubbard including personal diaries. From reading this manuscript it is self-evident that the unpublished quotes could not have been included without having the documents at hand. These documents could not have been obtained except by unauthorised access to them.

3. Mr. Miller in his publication goes into a rather detailed explanation as to how Gerry Armstrong, an ex-employee of the Church, had acquired these private writings of Mr. Hubbard's while working as a researcher on a biography of Mr. Hubbard. My affidavit will explain how these unpublished writings could only have come from Gerry Armstrong in breach of his agreements to keep these private writings absolutely confidential.

4. Gerald Armstrong was an employee of the Church from February 1969 to December 1981. There is now produced and shown to me marked "KDL 2", as evidence of Mr. Armstrong's employment, a copy of the W-2 Wage and Tax Statements issued by the Church for Mr. Armstrong during the years 1977 and 1978. There is also now produced and shown to me marked "KDL 3" a copy of an Affidavit executed by Mr. Armstrong on April 12, 1980, in which Mr. Armstrong affirmed at paragraph 1 that he was employed by the Church.

5. On January 8, 1980, Mr. Armstrong requested permission from the Founder of the religion of Scientology, Mr. L. Ron Hubbard, to be allowed to create a position within the Church which would compile, protect and preserve Mr. Hubbard's personal papers. Mr. Armstrong informed Mr. Hubbard that his purpose in making the request was because the position would require that "the person doing such would have to have your trust". There is produced and shown to me marked "KDL 4" a copy of Mr. Armstrong's request of January 8, 1980 to Mr. Hubbard. As the Court will see, Mr. Armstrong's request was copied to his supervisors within the Church in the upper right hand corner of the first page.

6. Upon Mr. Armstrong's request, the Church then allowed Mr. Armstrong to create a position within a division of the Church known as the "Personal Office of LRH". There is now

produced and shown to me marked "KDL 5" a copy of the Fictitious Business Name Statement of March 12, 1980 which established the Personal Office of LRH as a fictitious name for the Church of Scientology of California. Mr. Armstrong's new position was entitled "Senior LRH Personal Public Relations Officer Researcher" ("Snr R Pers PRO Researcher"). There is now produced and shown to me marked "KDL 6" a copy of the dispatch distributed by Mr. Armstrong on February 3, 1980, announcing his assumption of the new position.

7. As the Court will see, Mr. Armstrong was aware of his obligation to hold confidential the information he obtained as an employee of the Church long before he assumed the position of Researcher in 1980 and he continued to remain aware of this obligation while holding that position. There is now produced and shown to me marked "KDL 7" a copy of the Non-Disclosure and Release Bond executed by Mr. Armstrong on March 18, 1977 in which Mr. Armstrong acknowledged his employment with the Church and that any information or knowledge obtained by him as an employee was done so in a relationship of trust and confidence and imparted to him a fiduciary duty to the Church. There is also now produced and shown to me marked "KDL 8" a copy of the dispatch dated February 22, 1980 and written by Mr. Armstrong, in which he describes the value of the materials which he was collecting

and requesting increased security arrangements for the office in which those materials were to be stored. As the Court will see, Mr. Armstrong stated that he would sleep in the office to ensure the safety of those documents until such time as the security arrangements had been enhanced. There is now also produced and shown to me marked "KDL 9" a dispatch by Mr. Armstrong of May 14, 1980, in which he stated that other Church staff were "extremely reluctant" to furnish him with personal information about Mr. Hubbard's family and friends, and in which Mr. Armstrong obtained access to such information after assuring his fellow staff "as to the confidentiality these files are given".

8. On October 30, 1980, AOSH DK Publications and author Omar V. Garrison entered into an Agreement under which Mr. Garrison was to engage in the writing of a biography of Mr. Hubbard. There is now produced and shown to me marked "KDL 10" a copy of the agreement between Mr. Garrison and AOSH DK Publications. Shortly thereafter, AOSH DK Publications requested assistance from the Church in executing the terms of its agreement with Mr. Garrison, and specifically the assignment of a Church employee who would work as an assistant to Mr. Garrison and "assist in research and office duties as needed". There is now produced and shown to me marked "KDL 11" a copy of the letter of November 14, 1980 sent by the Secretary of the Board for AOSH DK Publications

to the Board of Directors for the Church. As the Court will see, the Board of Directors for the Church confirmed the agreement with the terms of the letter, and later ratified its agreement in a written Resolution. There is now produced and shown to me marked "KDL 12" a copy of the Resolution adopted by the Board of Directors of the Church in adopting the agreements proposed by AOSH DK Publications. Mr. Armstrong was the Church employee thereafter provided to Mr. Garrison pursuant to this agreement.

9. Mr. Armstrong assisted Mr. Garrison as a researcher and office assistant until he voluntarily terminated his employment with the Church on December 12, 1981. As the Court will see, by the time Mr. Armstrong left the Church he had furnished Mr. Garrison with "a great deal of materials" which were in Mr. Garrison's possession. There is now produced and shown to me marked "KDL 13" a copy of Mr. Armstrong's letter of December 12, 1981, in which he resigned his position in the Church.

10. On August 2, 1982, the Church brought a lawsuit against Gerald Armstrong, under two causes of action, namely, conversion and breach of fiduciary relationship, in respect of which the Church sought injunctive relief and imposition of a constructive trust. There is now produced and shown to me marked "KDL 14" a true and accurate copy of the

complaint. On August 24, 1982, the Honourable Judge John L. Cole of the Los Angeles County Superior Court issued a Temporary Restraining Order requiring Mr. Armstrong, his counsel, and all other persons participating or working in concert with Mr. Armstrong to surrender to the Clerk of the Los Angeles Superior Court all of the documents taken by Mr. Armstrong. There is now produced and shown to me marked "KDL 15" a copy of the Temporary Restraining Order. As the Court will see, the terms of that Order specified that the documents surrendered to the Court would remain under seal, available only to the parties in the action and only for purposes of that action.

11. On October 4, 1982, the Honourable Judge John L. Cole issued an order superseding the Temporary Restraining Order, but which maintained the sealing and confidentiality provisions of his prior Order pending resolution of the matter. There is now produced and shown to me marked "KDL 16" a copy of the Preliminary Injunction dated October 4, 1982.

12. On June 24, 1983 after several disputes over the writing of the LRH biography, Mr. Garrison entered into a Settlement Agreement with New Era Publications, the successor corporation to AOSH DK Publications. There is now produced and shown to me marked "KDL 17" a copy of the

public settlement agreement, in which Mr. Garrison acknowledged that he returned all copies of the materials furnished to him to the Church of Scientology International and that he has no right of possession to any of those materials.

13. Trial was heard on the Church's suit against Mr. Armstrong from May 3, 1984 through June 8, 1984. On June 20, 1984 the trial court issued a Memorandum of Intended Decision which, on July 20, 1984, was held to be the Statement of Decision. As the Court will see, the trial court ruled that the Church had made out a prima facie case against Mr. Armstrong for conversion, breach of confidence, breach of fiduciary relationship and invasion of privacy, but that Mr. Armstrong was justified in having taken the materials. The trial court also ordered certain of the previously sealed exhibits to remain under seal while unsealing the majority of the previously sealed trial exhibits. The trial court also ordered that the documents surrendered to the Clerk of the Court pursuant to the Temporary Restraining Order of August 1982 which had not been introduced during trial were to remain under seal pending trial of a separate suit brought by Mr. Armstrong against the Church. There is now produced and shown to me marked "KDL 18" a true and accurate copy of the Memorandum of Intended Decision dated June 20, 1984. This decision is

currently still on appeal.

14. Following the trial, the Church sought and obtained a series of sealing orders which effectively maintained the sealing of the trial exhibits right up to and including December 1986. There is now produced and shown to me marked "KDL 19" true and accurate copies of the sealing orders.

In December 1986, as the result of a settlement agreement reached between the Church and Mr. Armstrong in relation to Mr. Armstrong's cross-complaint, the trial court ordered the documents be returned to the Church. There is now produced and shown to me marked "KDL 20" a true and accurate copy of the December 11, 1986 Order issued by the trial court allowing for the return of the trial exhibits to the Church. The trial exhibits were then returned to the Church without their ever having been made available by the court to the general public for copying.

15. As the Court will see in reviewing "KDL 20", referred to immediately above, the settlement agreement entered into by the Church and Mr. Armstrong did not affect the Church's appeal of the trial court's decision in its case against Mr. Armstrong. In addition to seeking the numerous temporary sealing orders described above following the 1984 trial, the Church had also initiated proceedings to appeal the trial court's July 20, 1984 ruling. That appeal is still pending

with the California Court of Appeal and the action is still very much alive.

16. As stated above I have reviewed the manuscript by Russell Miller entitled "Bare-Faced Messiah". I have also caused to be reviewed certain documents returned to the Church by the court in December 1986 after the settlement with Mr. Armstrong. Mr. Miller's manuscript contains a number of direct quotes taken from these documents which were held under seal by the court.

17. At page 24 of the manuscript, Mr. Miller both refers to information contained in, and quotes directly from, Mr. Hubbard's Boy Scout diary. This diary was never introduced at trial of the action against Mr. Armstrong and so has never been unsealed nor made available to the general public.

18. At pages 45 to 46 of the manuscript, a letter from Mr. Hubbard's mother to Mr. Hubbard is quoted. This document has never been made available to the general public.

19. At pages 81 to 82 of the manuscript, large portions of a letter from Mr. Hubbard to his wife, Polly, are quoted. That letter, which I believe to be dated July 21, 1938, was

taken by Mr. Armstrong and then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Mr. Armstrong, and so has never been unsealed or made available to the general public.

20. At page 90 of the manuscript, a sentence from a one page letter from Mr. Hubbard to the Cape Cod Instrument Company is quoted. That letter was taken by Mr. Armstrong as part of a larger compilation of documents concerning a cruise taken by Mr. Hubbard, and was then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Armstrong, and so has never been unsealed or made available to the general public.

21. At pages 107 to 108 of the manuscript, several sentences written by Mr. Hubbard on January 6, 1944 in a Journal he kept as an officer in the U.S. Navy are quoted. That Journal was taken by Mr. Armstrong and then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Mr. Armstrong and so has never been unsealed or made available to the general public.

22. At pages 23 to 25, 29 to 34 and 37 to 45 of the manuscript, numerous passages are directly quoted from three diaries kept by Mr. Hubbard between 1927 and 1929.

These diaries primarily concern several trips made by Mr. Hubbard to the Orient, including Japan, China and Hong Kong. These have never been available to the general public.

23. On page 258 of the manuscript, Mr. Miller both quotes from and gives information from a "Tentative Constitution for Rhodesia", written by Mr. Hubbard. This document has never been available to the general public.

24. Mr. Armstrong testified during a deposition taken on August 1, 1986 that he had met Mr. Miller in approximately May of 1986. Mr. Armstrong indicated that not only did he believe that Mr. Miller had archival documents, but also that Mr. Miller was aware of the litigation arising out of Mr. Armstrong's breach of fiduciary duty to the Church and would have had or read documents about the Church's suit against him in this respect. Mr. Armstrong also indicated that he had furnished Mr. Miller with documents and information, although he did not identify which documents he had provided to Mr. Miller. There is now produced and shown to me marked "KDL 21" a true and accurate copy of Mr. Armstrong's testimony of August 1, 1986 concerning his contact with Mr. Miller.

25. Mr. Miller, by his own admission, is fully aware that the Church issued legal proceedings against Mr. Armstrong

for removal of Mr. Hubbard's confidential documents from the Church while Mr. Armstrong was employed by the Church. Mr. Miller is also fully aware that the Church has appealed the decision of the Los Angeles Superior Court, and that these confidential documents, the contents of some of which Mr. Miller is now seeking to publish, still remained under court seal when he obtained them from Mr. Armstrong.

26. For the reasons stated above, I know that the documents quoted and paraphrased in Mr. Miller's manuscript were not available to him from the court. I also know that Mr. Armstrong refused to obey an order of the court, and retained possession of documents which he had been ordered to surrender to the court for safekeeping under seal. I also know that Mr. Armstrong had contact with Mr. Miller as early as mid-1986. Based on these facts, it is my belief that the documents quoted and paraphrased in Mr. Miller's manuscript were furnished to Mr. Miller by Mr. Armstrong, and that they could not have been furnished to Mr. Miller by anyone else as no-one else other than Mr. Armstrong had access to these documents. Given these facts I am greatly concerned that Mr. Miller may still be in possession of copies of the said documents and may disseminate confidential information contained therein by distributing copies of the said documents to third parties or in some other manner impart the information contained therein to

such third parties.

27. I have read the affidavit written by David Morton Ziff and understand that Mr. Ziff's affidavit states that he witnessed the taking of a photograph of L. Ron Hubbard on the ship "Apollo" in Portugal in 1970. Mr. Ziff attaches to his affidavit a photograph of L. Ron Hubbard and states that the photograph was taken by Sylvia Calhoun, who at the time was employed by the Church as the "LRH Photographer".

This unpublished photograph of L. Ron Hubbard is owned by the Church and the negative of the photograph is in the possession of the Church. There is now produced and shown to me marked "KDL 22" a copy of a photograph of L. Ron Hubbard which is the same photograph of Mr. Hubbard taken by Sylvia Calhoun on the ship Apollo in 1970 as described in the affidavit of Mr. Ziff.

28. There is now produced and shown to me marked "KDL 23" a copy of an advertisement which appeared in the publication "Bookseller", Issue number 4256, dated July 17, 1987. This advertisement depicts the forthcoming book "Bare-Faced Messiah, the True Story of L. Ron Hubbard" and includes a picture of L. Ron Hubbard, which is the same photograph of L. Ron Hubbard marked "KDL 22" which was taken by Sylvia

Calhoun and the copyright in which is owned by the Church as described above. The use of this photograph of L. Ron Hubbard in the advertisement in "Bookseller" is unauthorised and hence an infringement of the copyright in this photograph owned by the Church. I also believe that the photograph of L. Ron Hubbard and design surrounding it in the magazine advertisement in "Bookseller" is a depiction of the front of the dust cover of Russell Miller's forthcoming book. The use of Mr. Hubbard's photograph on the front of the dust cover is likewise unauthorised and an infringement of the Church's copyright in the afore-mentioned photograph of L. Ron Hubbard.

29. I have read the affidavit written by Julie Fisher and understand that Mrs. Fisher's affidavit states that she was one of the individuals who was photographed with L. Ron Hubbard in the Dutch Antilles in late 1974 and early 1975. Mrs. Fisher attaches to her affidavit a photograph of herself, other Church staff and L. Ron Hubbard, and states that the photograph was taken by Maude Castillo, who at the time was employed by the Church as the "LRH photographer". Maude Castillo took this photograph of L. Ron Hubbard in her capacity as a photographer for the Church. The copyright in this unpublished photograph of L. Ron Hubbard is owned by the Church of Scientology of California and the negative of the photograph is in the possession of the Church. There is

now produced and shown to me marked "KDL 24" a copy of a photograph of L. Ron Hubbard which is the same photograph of Mr. Hubbard taken by Maude Castillo in late 1974 and early 1975 as described in the affidavit of Mrs. Julie Fisher and produced there as Exhibit "JT 1".

30. There is now produced and shown to me marked "KDL 25" a copy of a page from Mr. Miller's manuscript. This page includes a photograph depicting L. Ron Hubbard and Church staff, and is the same photograph of Mr. Hubbard marked "KDL 24" that was taken by Maude Castillo and which is owned by the Church as described above. The planned use of this photograph of L. Ron Hubbard by Mr. Miller is unauthorized and hence an infringement of the copyright in this photograph owned by the Church of Scientology of California.

31. The Church has spent thousands of man hours and millions of dollars since 1982 in order to uphold the duty it owed to Mr. Hubbard as the bailee for his materials when they were taken by Mr. Armstrong. If Mr. Miller's manuscript is published with the direct quotations and paraphrases taken from Mr. Hubbard's personal documents, it will completely frustrate the purpose of the appeal by the Church now pending before the Los Angeles Superior Court by making public the very documents whose confidentiality the Church and the Courts have protected for the past five

years.

32. If Mr. Miller is allowed to publish his manuscript containing very personal and intimate details about Mr. L. Ron Hubbard with his photograph referred to in paragraph 29 above as well as the photograph on the dust cover, the buyers may very well at first glance be led to believe that the book has been supported or approved by the Church. Nothing could be further from the truth as the book has been written entirely without the Church's participation.

33. The Church is engaged in the preparations for an official biography of Mr. L. Ron Hubbard. Should Mr. Miller be permitted to use the hitherto unpublished photographs hereinbefore referred to at paragraphs 27 and 29, the Church would be deprived of its first publication rights in respect of the said photographs.

34. If Mr. Miller is allowed to publish the confidential information contained in Mr. Hubbard's personal and private documents, the confidentiality of that information will be forever lost. The Church will be irreparably harmed, without any adequate remedy in monetary terms, as the Court cannot order the bell be unring once it has been rung, or determine how far the sound has reached.

33r.

EXHIBIT C

Deponent: Kenneth David Long
Deponent's: Second Affidavit
Sworn on 5th October 1987
In Support of Plaintiff

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No. 6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA

(Plaintiff)

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED

(Defendants)

AFFIDAVIT
OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:

1. I have been a member of the Church of Scientology for eleven years, and employed by the Church of Scientology of California (hereinafter the "Church") for the past seven years. The Church is a non-profit making religious

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corporation registered in California since 1954. My duties for the past five years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I wish to inform the Court at the very outset of this Affidavit that it is not in any way the intention of the Church to prevent the publication of Mr. Miller's book, or the Sunday Times serialisation of Mr. Miller's book. It is, however, the full intention of the Church to prevent publication of the photographs owned by the Church, and the information and documents obtained from the Church as a result of a breach of confidence and in violation of court orders.

3. I have been deeply involved in the litigation of the case of (Church of Scientology of California and Mary Sue) (Hubbard v. Gerald Armstrong), Los Angeles Superior Court case number C 420153, since the inception of that litigation on August 2, 1982. During the course of my participation in that litigation, I personally inventoried the materials surrendered pursuant to court order to the Clerk of the Los Angeles Superior Court in September 1982 by Gerald Armstrong and his counsel. I also attended almost every deposition and/or pre-trial proceeding held in that case, and was present as an assistant to counsel throughout each day of the trial proceedings in May and June, 1984.

4. As will be made clear for the Court in the paragraphs immediately following, the Church's case against Mr. Armstrong

involved thousands of documents covering a wide range of subjects. Mr. Armstrong admitted in oral testimony given in August 1982 that he had taken over 5,000 pages of original documents and 5,000 pages of xeroxed copies of documents, all of which originated from the Archives then maintained by the Church of Scientology of California. There is now produced and shown to me marked as "KDL 27" pages 234 to 235 from the deposition of Gerald Armstrong taken on August 18, 1982. As will also be made clear for the Court in the paragraphs immediately following, the vast majority of the documents taken by Mr. Armstrong remained under seal without interruption from September 1982, when Mr. Armstrong and his counsel surrendered said documents into the custody of the Clerk of the Los Angeles Superior Court, until December 1986, when said documents were returned to the Church. Additionally, through the efforts of Church representatives and counsel, the remaining documents likewise remained under seal throughout the same period, and were never available for copying by members of the public.

5. It was the theft by Mr. Armstrong of those documents, which included the boyhood diaries and journals of Mr. L. Ron Hubbard, letters between Mr. Hubbard and his family, correspondence between Mr. Hubbard and his friends and associates spanning over forty years, Mr. Hubbard's military records, and so forth, which formed the basis for the Church's action against Mr. Armstrong on August 2, 1982.

6. On August 24, 1982, the Los Angeles Superior Court issued a temporary restraining order, a copy of which was attached to my previous Affidavit of October 5, 1987 as Exhibit "KDL 15." That temporary restraining order required Mr. Armstrong, his attorneys, agents, and all persons working in concert or participation with him to surrender to the Clerk of the Court all of the materials originating in the Church archives which had been taken by Mr. Armstrong. The order further required that the materials, when surrendered to the Court, be maintained under seal and available only to the parties for use in that litigation only. This temporary restraining order was then superseded, on September 24, 1982, by a preliminary injunction, which was also attached to my prior Affidavit as Exhibit "KDL 16." The preliminary injunction maintained the sealing provisions established by the temporary restraining order.

7. The preliminary injunction remained in full force and effect with respect to all of the documents surrendered by Mr. Armstrong and his counsel until June 20, 1984, following a trial of the case against Mr. Armstrong. Attached to my previous Affidavit of October 5, 1987, as Exhibit "KDL 18," is a copy of the June 20, 1984 Memorandum of Intended Decision. That decision modified the preliminary injunction to the extent that the documents originally surrendered to the Clerk of the Court by Mr. Armstrong and his counsel became divided into two separate categories -- those documents introduced into evidence during the trial of the action, and those

documents which were not introduced into evidence and which remained in the possession of the Clerk of the Court.

8. The Memorandum of Intended Decision ordered that the documents which had not been introduced into trial remain under seal in the possession of the Clerk of the Court, effectively maintaining the terms of the preliminary injunction with respect to these documents. The Memorandum of Intended Decision also ordered that approximately 175 of the nearly 200 exhibits introduced during the trial from the documents held under seal were to be treated in the same fashion as other Superior Court trial exhibits, i.e., they were to be considered matters of public record and available for inspection by the public.

9. However, on June 25, 1984, and before any of the unsealed trial exhibits could be made available to the public, the Church and Mrs. Hubbard sought and were granted a stay of the trial court's order, thereby preventing the trial exhibits from becoming available for public inspection. A copy of that order staying the unsealing is attached to my previous Affidavit as Exhibit "KDL 19." Between the end of trial on June 8, 1984, and the issuance of the temporary stay on June 25, 1984, I caused a watch to be maintained over the area in the courthouse wherein the trial exhibits were stored to ensure that no one, other than trial court personnel, had access to said materials. Additionally, I later personally confirmed with Ms. Rosie Hart, the clerk for the Honorable Paul Breckenridge Jr., the trial judge for the Church's case

against Mr. Armstrong, that none of the trial exhibits were made available to anyone at any time prior to the issuance of the temporary stay order of June 25, 1984.

10. Thereafter, between June 25, 1984 and December 3, 1984, the Church and Mrs. Hubbard sought and obtained a series of orders which maintained the seal of the trial exhibits until December 19, 1984. Copies of the relevant orders sought and obtained are attached to my previous Affidavit as Exhibit "KDL 19." On December 19, 1984, and until approximately midday on December 20, 1984, the trial exhibits were made available for inspection by members of the public. I was present in court on both days, as were several hundred or more other Scientologists who were outraged that the personal and private papers of Mr. Hubbard were going to be made available for public inspection. I personally observed that, with the single exception of a reporter from the United Press International, no member of the public other than the Scientologists who were permitted to see the trial exhibits. I further observed that no member of the public, including the reporter or any of the Scientologists who did inspect the exhibits, obtained copies of any of the exhibits from the court. The court simply did not permit any of the exhibits to be copied.

11. On December 20, 1984, the Honorable Judge Lawrence Waddington issued a temporary restraining order in the case of (Roes 1 through 200 v. Superior Court of the State of)

(California for the County of Los Angeles), Los Angeles Superior Court case number C 527556, an action taken to reseal the trial exhibits by individuals who were named or otherwise identified in said exhibits. Immediately upon the issuance of the said temporary restraining order, a copy of which is attached to my previous Affidavit as Exhibit "KDL 19," the public inspection of the trial exhibits was halted. Thereafter, no further public inspection of the trial exhibits was ever allowed by the court, and I have personally confirmed with the court personnel responsible for the caretaking of the exhibits that absolutely no inspection or copying of the trial exhibits was allowed. The final order, which maintained the seal on the trial exhibits until they were returned to the Church in December 1986, is also attached to my previous Affidavit in Exhibit "KDL 19." That order, dated January 26, 1985, was issued by the California Court of Appeal in the (Roes) case following the denial of the Roe plaintiffs' application for preliminary injunction.

12. In summary, as this Court can see from the above facts, two of the aforementioned court orders pertaining to the sealing of the confidential materials are especially relevant to the instant action involving Penguin Books Limited and Mr. Miller. The first is the preliminary injunction of September 24, 1982, which is the applicable order for all documents surrendered by Mr. Armstrong and his counsel which were not then later introduced during the May and June 1984 trial of the Church's case against Mr. Armstrong. The second

is the January 26, 1985 stay order issued by the California Court of Appeal in the (Roes) case, which is applicable to the documents introduced during the trial of the Church's action against Mr. Armstrong. Due to these two court orders, all of the documents remained under seal at all times relevant to this present litigation. No copies of any of said documents could have been obtained from the Los Angeles Superior Court.

13. In my First Affidavit, at paragraphs 16 through 23, I referred to a number of passages in Mr. Miller's book which directly quote from the documents originally taken by Mr. Armstrong and which are now at issue in the instant litigation. As the Court will note in reviewing the passages raised herein, however, there is far more at issue than simply the direct quotes. In many instances, Mr. Miller has gone far beyond merely quoting from the documents and, instead, has based much of his writing on information taken from the documents. For example, although pages 29 through 39 of Mr. Miller's book contain a great many direct quotes from Mr. Hubbard's boyhood diaries, those same pages are also almost wholly based on the information in the said diaries even where not directly quoted.

14. I have reviewed the unsworn Affidavit of Jonathan Caven-Atack in which he makes various statements concerning the status of the documents at issue in this matter.

15. At paragraph 3 of Mr. Caven-Atack's Affidavit, I note that he claims to have obtained "copies of the majority of the

released exhibits from the Superior Court of the State of California." For the reasons set forth in more detail hereinbelow, I believe that Mr. Caven-Atack's statement is nothing more or less than a willful and knowing perjury to this Court.

16. In support of my statement, I respectfully request the Court to review paragraph 10 of Mr. Caven-Atack's Affidavit. In said paragraph, Mr. Caven-Atack describes three diaries authored by Mr. L. Ron Hubbard between the years 1927 and 1929. Mr. Caven-Atack explicitly states that the diaries were introduced during the trial of the Church's case against Mr. Armstrong in 1984 as trial exhibits 62, 63 and 65. He further attaches copies of said diaries to his Affidavit as Exhibit JC-A 4.

17. As the Court will note for itself in reviewing Exhibit JC-A 4, none of the three diaries demonstrates the exhibit marking of the Los Angeles Superior Court. Instead, each diary demonstrates a number written by hand on the first page.

18. I was present during each day of the trial against Mr. Armstrong in May and June, 1984. I recognize the handwritten denotations of the numbers "62," "63" and "65" as having been placed on the diaries by Church counsel Robert Harris just before handing the diaries to the trial court and Mr. Armstrong's counsel as exhibits.

19. I have detailed for the Court hereinabove the

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various orders issued by the courts in the United States which maintained these diaries under seal until they were returned by the court to the Church in December 1986. The Second Affidavit of Timothy Bowles, at paragraph 14, likewise states that no copies of any of the trial exhibits, which would specifically include the diaries, were ever available to any member of the public such as Mr. Caven-Atack, from the Los Angeles Superior Court.

20. Based on the above facts, I am certain that the (only) possible source for the diaries attached by Mr. Caven-Atack as Exhibit JC-A 4 is Mr. Armstrong and/or his counsel. Had Mr. Caven-Atack actually obtained said copies from the Los Angeles Superior Court, as he claims at paragraph 3, the said copies would demonstrate the exhibit marking of the Superior Court. I am also certain, as a matter of logical necessity flowing from the above facts, that Mr. Caven-Atack has willfully and knowingly perjured himself before this Court.

21. At paragraph 5 of Mr. Caven-Atack's Affidavit, he further avers that he did not at any time receive any sealed documents from Mr. Armstrong or counsel for Mr. Armstrong. However, as set forth hereinabove, the copies of the diaries attached as Exhibit JC-A 4 were given only to Mr. Armstrong and his counsel. The sole source for those copies is therefore obviously and only Mr. Armstrong or his counsel. Mr. Caven-Atack met with Mr. Armstrong in the United Kingdom at least in June 1984, if not also on other occasions. There is

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now shown and produced to me marked as "KDL 28" a copy of pages 260 to 262 from the oral testimony of Gerald Armstrong of July 31, 1986, in which he states that he met with Mr. Caven-Atack in the London area on several occasions in or about June 1984. I note that Mr. Caven-Atack avoids any mention in his Affidavits of having met with Mr. Armstrong, and that he likewise does not deny having received any documents from Mr. Armstrong. Interestingly enough, Mr. Caven-Atack also mentions nowhere that he ever went to the Los Angeles Superior Court. In view of the facts already set forth hereinabove, Mr. Caven-Atack's statement is either an additional perjurious statement made to this Court or an attempt to avoid the truth through word games.

22. At paragraph 8 of the Affidavit of Mr. Caven-Atack, he states that the letter from Mr. Hubbard's mother to Mr. Hubbard of September 30, 1929 was introduced as an exhibit during the trial of the Church's case against Mr. Armstrong. I note that Mr. Caven-Atack does not contest the statement made in my First Affidavit at paragraph 18, in which I stated that the letter has never been made available to the general public. My statement is true, as has been demonstrated to the Court through my summary of the orders maintaining the trial exhibits effectively under seal until their return to the Church in December 1986. I further note that Mr. Caven-Atack does not deny that he has a copy of said letter, and that he has failed to attach a copy of said letter to his Affidavit as an exhibit.

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23. I have reviewed the statements made by Mr. Caven-Atack in paragraphs 7, 9 and 10 of his Affidavit, concerning Mr. Hubbard's Boy Scout Diary, Mr. Hubbard's letter to the Cape Cod Instrument Company, and a single one of the three boyhood diaries authored by Mr. Hubbard between 1927 and 1929. As a result of my review, I do agree that a few pages from Mr. Hubbard's Boy Scout Diary, the letter to the Cape Cod Instrument Company, and a portion of one of Mr. Hubbard's three diaries previously discussed hereinabove, were actually available to the public from the Church, and were mistakenly brought before the Court through a clerical error. However, in light of Mr. Caven-Atack's apparent disregard for the truth, as additionally evidenced, for example, by the fact that there was no showing of the Boy Scout diaries in Toronto in October 1986, I have reached this conclusion only after having verified for myself the truth of the matter.

24. At paragraph 10 of Mr. Caven-Atack's Affidavit, concerning three diaries authored by Mr. Hubbard between 1927 and 1929, Mr. Caven-Atack states that the three diaries were introduced during the trial of the Church's case against Mr. Armstrong in May and June, 1984. I agree with Mr. Caven-Atack's assertion. Indeed, the Church has not stated any differently. However, I also respectfully refer the Court to the discussion hereinabove concerning the various court orders which maintained these documents under seal. Despite Mr. Caven-Atack's assertion, the documents were not publicly available from the Los Angeles Superior Court, and he could

not have obtained copies therefrom.

25. At paragraph 11 of Mr. Caven-Atack's Affidavit, he refers to a list of exhibits unsealed during the trial of the Church's case against Mr. Armstrong, and concludes that the letter from Mr. Hubbard to his wife, Polly, was not introduced into said trial at any time. Although I know of no such list as that referred to by Mr. Caven-Atack, his conclusion is accurate. I note that neither Mr. Caven-Atack nor Mr. Miller have denied that the information in this letter arises from the documents maintained under seal from September 1982 until December 1986, and I further note that neither Mr. Miller nor Mr. Caven-Atack have attempted to explain how they came into possession of said letter.

26. I have reviewed the Affidavit of Russell Francis Miller, sworn to on October 3, 1987. In doing so, I have noted that Mr. Miller states at paragraph 10 that he obtained much of the information at issue herein from Mr. Caven-Atack. Mr. Miller also avers that he was informed by Mr. Caven-Atack that some of the documents had been used in connection with the litigation between the Church and Mr. Armstrong, but that he was informed by Mr. Caven-Atack that some of the documents, although not all of them, which were used in connection with the litigation had been unsealed. As I have set forth for this Court in the paragraphs immediately hereinabove, and in my First Affidavit, the documents were neither left unsealed nor were they ever available for Mr. Atack to publicly inspect or

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copy from the Los Angeles Superior Court. Additionally, as I have set forth in my Third Affidavit, also sworn to on October 5, 1987, I verily believe that Mr. Caven-Atack has perjured himself to this Court, and that Mr. Miller's reliance upon him is therefore sadly misplaced.

27. At paragraph 17 of Mr. Miller's Affidavit, he indicates that the letter from Mr. Hubbard's mother to Mr. Hubbard was made available to him by Mr. Atack. This letter was introduced during the trial of the (Armstrong) case, and so remained under seal pursuant to the stay order of January 25, 1985 until December 1986, when it was returned to the Church.

28. At paragraph 18 of Mr. Miller's Affidavit, he states that he is uncertain that the July 21, 1938 letter from Mr. Hubbard to his wife, Polly, is the same as the letter which he has noted in his book as having been written in October. I have been permitted to compare the relevant text of Mr. Miller's book to the letter of July 21, 1938, and I wish to clearly state to this Court that Mr. Hubbard's letter of July 21, 1938 is the source for the information in Mr. Miller's book. At paragraph 19 of Mr. Miller's Affidavit, he states that he obtained a copy of the said letter from a source whose identity he has promised not to reveal, and that he does not know whether or not the letter is one of the documents maintained under seal by the Los Angeles Superior Court. This letter was surrendered to the Clerk of the Court by Mr. Armstrong and his counsel in September 1982, and it remained

under seal pursuant to the preliminary injunction of September 24, 1982 until returned to the Church in December 1986. It is not surprising that Mr. Miller would not divulge his source since that individual is in violation of the court order of September 24, 1982.

29. At paragraph 22 of Mr. Miller's Affidavit, he indicates that his source for the information contained in his book concerning Mr. Hubbard's 1927 to 1929 diaries was Jon Atack. Said diaries were introduced during the May to June 1984 trial between the Church and Mr. Armstrong. As this Court has been informed hereinabove, the trial exhibits were maintained under seal through various stay orders, and particularly the stay order issued by the California Court of Appeal on January 26, 1985. At no time were copies of the said diaries provided to Mr. Atack or anyone else by the Los Angeles Superior Court.

30. I have reviewed and caused to be verified Mr. Miller's statements in paragraph 23 of his Affidavit. Mr. Miller's statement is highly suspect since he chose not to support said statement by attaching a copy of his request to the CIA. A copy of the document was introduced during the trial of the Church's case against Mr. Armstrong, and was maintained under seal pursuant to sealing orders described hereinabove, and particularly the stay order of January 26, 1985 issued by the California Court of Appeal.

31. Although not previously brought to this Court's

attention, and also based on information taken from documents held under seal pursuant to the preliminary injunction order of September 24, 1982, Mr. Miller's book includes three letters from Mr. Hubbard to Helen O'Brien in 1953. The first of these letters appears at page 213 of Mr. Miller's book, in the second complete paragraph, and concerns Mr. Hubbard's feelings about a former associate, Don Purcell. The letter is directly quoted, in part, by Mr. Miller. The second letter, which also contains direct quotations as well as information from the letter, appears at the last incomplete paragraph on page 213 and the first incomplete paragraph on page 214 of Mr. Miller's book. The third letter appears in the first complete paragraph on page 214 of Mr. Miller's book, and is again both directly quoted from as well as used as the basis for additional information imparted by Mr. Miller. All three of these letters were surrendered to the Clerk of the Court by Mr. Armstrong and his counsel in September 1982, and all remained under seal until they were returned to the Church in December 1986. Mr. Miller's inclusion of the information cited herein clearly shows additional breaches of confidence and violation of the orders issued by the California courts.

32. Based on the above information now furnished to this Court, I am certain that Mr. Miller has used information which could only have originated from Mr. Armstrong. I further believe that Mr. Miller recognized that his obtaining and use of that information was a perpetuation of the breach of confidence initiated by Mr. Armstrong, and that Mr.

Caven-Atack's claim to have obtained the documents from the Los Angeles Superior Court has been made with the knowledge that it is utterly false.

33. At paragraph 5 of his Affidavit sworn to on October 3, 1987, Mr. Miller describes what he terms was a "hostile reaction" from the Church when he informed it that he intended to write a book about Mr. Hubbard's life. Although his statements are irrelevant to the issues herein, and apparently included only to cast a bad light over the Church, I wish to inform this Court that the Church initially met with Mr. Miller and, in fact, agreed at one point to assist Mr. Miller in the research for his book. It was only after Mr. Miller's actions revealed his true intentions were to author a book that was biased and one-sided, contrary to his earlier undertaking that the book would truly be factual, that the Church refused to cooperate with him.

34. Mr. Miller's additional statements in paragraph 5, concerning the persons whom he was interviewing, also appear by their very lack of specificity to be designed to impugn the Church. The Court should be aware that such persons, the sources for Mr. Miller's book, are almost one for one former Scientologists who are now hostile to the Church and to Mr. Hubbard. Hana Eltringham Whitfield, for example, is quoted rather extensively by Mr. Miller throughout the latter portion of the book. Yet he fails to mention at any point that Mrs. Whitfield is attempting to extort millions of dollars from the

Church by filing a purported class action suit in the United States which has been thrown out of court three times, and in which Mrs. Whitfield and the other plaintiffs have been sanctioned by the court. There is now shown and produced to me marked as "KDL 28" a copy of the Court's order of September 24, 1987, dismissing the purported class action suit for the third time.

35. At paragraph 30 of his Affidavit, Mr. Miller attempts to raise the spectre that a granting of the injunction requested by the Church would adversely affect the serialisation of Mr. Miller's book by the Sunday Times. This is not the case. As I stated in paragraph 2 hereinabove, the Sunday Times is free to publish a serialisation of Mr. Miller's book as long as it does so without violating the rights of the Church. In order to ensure that the rights of all parties are made known and thereby preserved to each, the Church's solicitor has forwarded a letter to the Sunday Times, placing it on notice of the current undertaking by the Defendants herein. The letter additionally reminds the Sunday Times of its undertaking of January 14, 1970, in which it agreed not to publish any of the allegations now raised by Chapter 7 of Mr. Miller's book. There is now shown and produced to me marked as "KDL 30" a copy of the October 5, 1987 letter sent by Mrs. Hamida Jafferji, solicitor for the Church, to the Sunday Times. There is also now shown and produced to me marked "KDL 3Q" a copy of the October 5, 1969 article entitled "The Odd Beginning of Ron Hubbard's Career,"

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which article contains the statements prohibited by the
aforementioned undertaking.

36. I have reviewed the unsworn first Affidavit of Julie A Scott-Bayfield, who describes at paragraph 2 an incident involving the copying of a xerox of Mr. Miller's book. Although the information imparted by Mrs. Scott-Bayfield is completely irrelevant to the issues in this case, I respectfully differ with her statement that the manuscript being copied by the Church representative is confidential to the Defendants. I have been informed that Penguin Books Limited have disseminated copies of the manuscript copied to persons in at least four separate countries -- the United Kingdom, the United States, Canada and Germany -- and that a person affiliated with the publisher furnished a copy of the manuscript to an individual who then furnished the copy to representatives of the Church. This individual has requested and was promised that he will not be identified due to his fear that he will be harassed or will otherwise be subjected to unpleasant actions by Mr. Miller or Penguin Books Limited for his assistance to the Church. The copy of the manuscript being copied was obtained in a completely legitimate manner. The copies were made solely for use in the present legal proceedings and, as I have been informed by counsel for the Church, therefore are specifically excluded from copyright infringement under the Copyright Act of 1956.

37. At paragraph 3 of the Affidavit of Julie A Scott-Bayfield, she alleges that one of the two photographs

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for which relief is sought by the Church is not actually owned by the Church. Mrs. Scott-Bayfield's statement is extended hearsay, as she is merely repeating information passed on to her by a Doreen Gillham, who, in turn, apparently obtained at least some of the information from a Larry Miller. However, leaving this aside, even if Mrs. Scott-Bayfield's explanation is accepted as true, the Church still has ownership of the photograph. The Church does not accept the claim that the photograph was taken by Mr. Miller, and actively contests that claim. Further, I have caused the records of the Church to be searched, and aver thereon that Mr. Miller was employed by the Church as a photographer. Even if the photograph was actually taken by Mr. Miller, it was taken by him pursuant to his employment as a photographer for the Church, and was and is owned by the Church. The negative is contained in the Church archives, and it is self-evident that Mr. Miller's copy of the photograph was made from another photograph rather than from the negative. Ms. Gillham's memory of events concerning the photograph is additionally suspect in that Julie Fisher was, at the time the photograph was taken, actually fourteen years of age and not ten or eleven as alleged by Ms. Gillham. Interestingly enough, Ms. Gillham herself was only seventeen at the time the photograph was taken. This photograph is registered in the United States Copyright Office to the Church of Scientology of California, with a registration number of VAu 116-627.

38. I have reviewed the Affidavit of Glen Keith Marks,

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sworn to on October 3, 1987. I have also reviewed the Affidavit of Michael Roy Garside, sworn to on October 5, 1987. Based on the matters stated therein, I verily believe that Rex Features Limited was not furnished with a copy of the photograph used on the dust jacket for Mr. Miller's book. I further believe that, even if such were the case, the Church did not relinquish or waive its copyright in the photograph; certainly no representative of the Church who met with Rex Features Limited was authorized to furnish such a waiver. I have caused the records of the Church to be searched and, as a result, I verily believe and do aver that the photograph used on the dust jacket of Mr. Miller's book has always been maintained in the archives of the Church, and that it has never been published or disseminated by the Church. This photograph is registered in the United States Copyright Office to the Church of Scientology of California, with a registration number of VAU 116-426.

SWORN at *St. Hill (know)*
East Grinstead, West
Sussex

Kenneth David Long

This *5th* day of October 1987

Before me,

S. N.

S. N.

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Deponent: Kenneth David Long
Deponent's: Third Affidavit
Sworn on 5th October 1987
In Support of Plaintiff

IN THE HIGH COURT OF JUSTICE

1987 C No. 6140

CHANCERY DIVISION

B E T W E E N :

THE CHURCH OF SCIENTOLOGY OF CALIFORNIA

(Plaintiff)

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED

(Defendants)

AFFIDAVIT

OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:

I have been a member of the Church of Scientology for eleven years, and employed by the Church of Scientology of California (hereinafter the "Church") for the past seven years. The Church is a non-profit making religious

corporation registered in California since 1954. My duties for the past five years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I have read the final draft of Russell Miller's upcoming book entitled "Bare-Faced Messiah," a purported biography of Scientology founder, L. Ron Hubbard.

3. The main sources of information for Mr. Miller's biography of Mr. Hubbard appear to be Jonathan Caven-Atack and Gerald Armstrong. As demonstrated in my First and Second Affidavits of October 5, 1987, Mr. Miller's and Mr. Caven-Atack's claims that they obtained documents concerning Mr. Hubbard and the Church from public sources, including the Los Angeles Superior Court, are overwhelmingly false. In an unsworn affidavit, Mr. Caven-Atack seeks to distract this Court from his obvious contempt and violation of United States court orders by a parade of irrelevant, disjointed and conclusory diatribe, including accusations of criminal activity. This is indeed an interesting turn.

4. Upon information Mr. Caven-Atack, prior to joining the Church of Scientology as a parishioner, had a record of drug use and drug pushing, including two convictions for possession of drugs. In fact, Mr. Caven-Atack credited the religious counseling procedures of Scientology with assisting him in kicking his drug habit, during the time he was a member of the religion. There is now produced and shown to me marked

"KDL 31" a petition written by Mr. Caven-Atack. In said petition, he requested to be allowed to become an employee of the Church of Scientology in Manchester, England, and details his involvement with drugs. Due to the policy of the Church whereby an individual with a criminal background is not allowed to work as a member of Church staff, Mr. Caven-Atack was denied employment by the Church, although he was not denied membership in the Church nor its help in keeping him off drugs.

5. In 1983 Mr. Caven-Atack resigned from his membership in the Church. Thereafter, in late 1983, there was a theft of sacred and confidential Church scriptures from a Church of Scientology in Copenhagen, Denmark, by three British citizens -- Ron Lawley, Robin Scott and Morag Bellmaine. Mr. Scott was subsequently arrested for the theft and convicted in Denmark. There is now produced and shown to me marked "KDL 32" a copy of the English High Court order enjoining the possession, use and distribution of the stolen Church scriptures.

6. In 1984, Mr. Caven-Atack received a copy of the stolen materials from Ron Lawley, made himself a copy of the materials, and sent them to Larry West, a citizen of California, U.S.A. There is now produced and shown to me marked "KDL 33," excerpts from the transcript of the oral testimony of Martin Ruston, taken in the United States, which describe the part Mr. Caven-Atack played in the illicit distribution of the scriptures stolen from the Church in

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violation of the English court order.

7. It thus does not surprise me that Mr. Caven-Atack would maliciously and deliberately engage in all manner of irrelevant and highly prejudicial mud-throwing at the Church of Scientology, given his own documented background as a drug pusher, purveyor of the Church's stolen and confidential religious scriptures and, as set forth in my First and Second Affidavits, possessor of other documents belonging to the religion's founder in violation of United States court orders. Given the discreditable background and dubious motives of Mr. Caven-Atack as regards a Church which opposes the use of drugs, opposes crime, and which extended to Mr. Caven-Atack its help regardless of his past transgressions, it is obvious to me that the evidence he gives should be recognized for what it is and disregarded.

8. Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government who planned to plant forged documents in Church files which would then be "found" by Federal officials in subsequent investigation as evidence of criminal activity.

9. The evidence is irrefutable that the great majority of these biographical documents were obtained by Mr. Caven-Atack and Mr. Miller in violation of court sealing orders. As such, the allegation of "unclean hands" in contexts entirely unrelated to the facts at issue here has as its only purpose to distract and inflame this Court into

denying the relief which the Church is seeking.

SWORN at *Saint Hill Manor*
East Greenstead, West
Surrey

Kenneth David Long

This 5th day of October 1987

Before me,

[Signature]

S.M. BIRD.

[Signature]

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Deponent: Sheila Macdonald Chaleff
Deponent's First Affidavit
Sworn on 5th October, 1987
In Support of the Plaintiff

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No. 6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

-- and --

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED. Defendants

AFFIDAVIT OF
SHEILA MACDONALD CHALEFF

I, SHEILA MACDONALD CHALEFF, of Saint Hill Manor, East Grinstead, Sussex, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for the past 27 years. I have been employed by various Church of Scientology corporations for 17 years and am presently the Director of the Office of Special Affairs for the United Kingdom.
2. In 1985 Mr. Russell Miller approached the Church indicating

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and was involved in distribution of materials stolen from the Church of Scientology. Mr. Armstrong is known to me to be a US government informant who has admitted on video tape that he intended to plant forged documents within the Church of Scientology and then using the contents to get the Church raided where these forged documents would be found and used against the Church. These are the same two individuals that Mr. Miller used to obtain the documents he used in his book.

8. On 11 August 1987, BBC Radio 4 aired a programme regarding L. Ron Hubbard and the Church of Scientology. This programme was researched and presented by Margaret Percy. After the airing of this programme, Mr. Atack wrote a letter to the "Radio Times" criticising Ms. Percy's programme even though he was a consultant to the programme. There is now produced and shown to me marked "SMC 2" a copy of Mr. Atack's letter to "Radio Times" with Ms. Percy's response.

9. The integrity of Mr. Miller and his sources of the documents in question are at best suspect. I have no doubt that the documents involved in this litigation were obtained in breach of court orders and the confidential relationship between the Church and Mr. Armstrong.

SWORN at
Sand Hill Manor
West Sussex
the 5th day of October
Before me,
[Signature]

Shula Chaloff

449

Deponent: Kenneth David Long
Deponent's Fourth Affidavit
Sworn on 7th October 1987
In support of Plaintiff

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No.6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED Defendants

AFFIDAVIT
OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for 11 years, and a member of the Church's staff for 7 years. I am employed by the Church of Scientology of California (hereinafter called "the Church") which is a non-profit

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making religious corporation registered in California since 1954. My duties for the past 5 years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I have been deeply involved in the litigation of the case of "Church of Scientology of California and Mary Sue Hubbard v. Gerald Armstrong", Los Angeles Superior Court cases number C 420153, since the inception of that litigation on August 2, 1982. During the course of my participation in that litigation, I personally inventoried the materials surrendered pursuant to court order to the Clerk of the Los Angeles Superior Court in September 1982 by Gerald Armstrong and his counsel. I also attended almost every deposition and/or pre-trial proceeding held in that case, and was present as an assistant to counsel throughout each day of the trial proceedings in May and June, 1984.

3. While attending proceedings held in the instant matter on Tuesday, October 6, 1987, I noted that the Court seemed to have additional questions concerning the status of the documents in the Armstrong case, and the relationship of the documents in issue herein to said status. Responses to the court's questions, to the content I have discerned them, follow hereinbelow.

4. The bottom line I wish to communicate is this: None of the

1986 were these 9,000 documents available to the general public, or considered to be in the public domain. This fact is very important since four of the seven documents at issue herein were contained in these 9,000 documents which remained under seal at all times. There is no legal way that Mr. Armstrong, Mr. Miller and/or Mr. Newman could have possession of these materials.

8. Trial ended in the Armstrong case on June 8, 1984. Between June 8 and June 20, 1984, the 200 exhibits were held by the trial judge unavailable to anyone else, for his use in writing the Memorandum of Intended Decision. No one other than court personnel had access to those 200 exhibits. I know this to be fact since I both maintained a watch over the area where the documents were kept and verified with Ms. Rosie Hart, the trial court's clerk, that no one was allowed access to these documents. In issuing the Memorandum of Intended Decision, the trial court ordered that 22 of the 200 exhibits were to remain sealed. Those exhibits joined the other 9,000 documents, leaving just approximately 178 exhibits affected by the following events.

9. On June 25, 1984, the first of what was to be a series of orders temporarily staying the unsealing of the trial exhibits was issued by the California court of Appeal. Please note Exhibit "KDL 19" attached to my first Affidavit. In addition, there is now produced and shown to me marked "KDL 34", a chronological History of Major Armstrong Case Orderss, which :

have personally prepared to assist counsel and the court.

10. In reviewing Exhibit "KDL 34" attached hereto, the Court will no doubt note what appear to be "windows," or gaps between the vacating of one order and the issuance of the next. These "windows" are far more apparent than they were real. To begin with, I maintained, along with my staff, a daily check with each court in which a temporary stay order was pending in order to ensure that I learned the minute a ruling was issued. So before the trial court received any order vacating a sealing order, the Church obtained another order sealing them up again. In actuality, it took 3-5 days for the trial court to receive a vacating order from the Higher Court and before receipt I would personally hand deliver a new stay order. In addition, I also had my staff maintain a watch over the area of the court where these documents were kept during each so called "window" period and no one viewed and/or copied the materials.

11. There was just a single incident when the 178 trial exhibited were made available for public inspection, on December 19, 1984 and until midday on December 20, 1984. This occurred after an injunction issued by the Ninth Circuit Federal Court of Appeals expired, and was then halted by the issuance of a temporary restraining order on December 20th in the "Roes" case, previously described in my Second Affidavit. I was physically present at the court during the entire time that the documents

were available for inspection by the public. I personally observed that, with the exception of a UPI reporter who was allowed only to view some of Mr. Hubbard's military records for no more than 30 minutes, only Scientologists obtained access to see the 178 trial exhibits. Additionally, I personally observed and then verified with court personnel that no one, including the reporter, were permitted copies of any of the exhibits. People were permitted to view the documents only and not copy them.

12. Following the issuance of the "Roes" order on December 20, 1984, the 178 trial exhibits were never again unsealed. These 178 trial exhibits, the other trial exhibits which had been left sealed throughout, and the 9,000 documents never entered into the trial, were then returned to the Church in December 1986.

13. As is clearly shown by the above events, no one was ever able to obtain copies of any of the 10,000 documents from the trial court. This fact is the basis for my statements, in my Second Affidavit, that Mr. Caven-Atack has perjured himself to this Court by claiming, in a sworn Affidavit filed herein, that he obtained copies from the court. Mr. Caven-Atack's obvious lack of specifics in his affidavit emphasizes this. Suspiciously left out of his affidavit are the facts supporting Mr. Caven-Atack's claim that he obtained the documents from the California court. Nowhere does Mr. Caven-Atack state when he was in California, when he went into the court, signed the visitor's sign-in log and the details of the actual copying. Mr. Caven-

Atack is silent on these points obviously because he never went to the court as verified by my conversation with the court clerk and my review of the visitor's sign-in log. There can be no doubt that the documents in issue herein, no matter through whom they were funneled to Mr. Miller, originated from Mr. Armstrong, in violation of court orders.

14. I have reviewed the Second Affidavit of Russell Francis Miller, relating to certain letters from Mr. Hubbard to one Helen O'Brien during 1953. The letter discussed by Mr. Miller at paragraph 3 of his affidavit is not at issue in this action, it is neither listed in the amended writ filed herein nor mentioned in my Second Affidavit precisely because, as Mr. Miller understands, it is a matter of public record. Mr. Miller attempts to create confusion with this Court by the inclusion of this particular letter.

15. At paragraph 4 of his Second Affidavit, Mr. Miller references three other Helen O'Brien letters which are at issue herein and states he obtained copies of these letters from Mr. Ron Newman. These three letters are part of the 9,000 documents which remained under seal in the court at all times and were returned to the Church in December 1986. Mr. Ron Newman nor anyone else could have legal possession of these letters since they could not have been obtained from the Court. It is interesting that Mr. Miller has "no idea" where Mr. Newman

obtained these letters, an important fact which would obviously be of interest to any researcher, author or anyone else receiving these documents. Gerald Armstrong was the only person that had these letters and he knowingly violated several court orders - the ~~September~~ ^{August DL} 24, 1982 court order to turn in all materials to the court and the June 20, 1984 court order sealing the documents. He obviously didn't keep them sealed since Mr. Newman and Mr. Miller have copies and he didn't turn in all copies of the letters when ordered, since as a condition of settlement Mr. Armstrong turned in any materials he had concerning LRH or the Church. I personally inspected the documents he turned in in January 1987 and among them were the three Helen O'Brien letters, letters that he was ordered to turn into the court. (A)

16. In order to clarify for the Court the exact status of each of the documents at issue herein, I have prepared a short Summary of said documents. There is now produced and shown to me marked "KDL 35" a copy of said Summary. As the Court will note, four of the documents in issue - the three O'Brien letters referred to hereinabove and Mr. Hubbard's letter to Polly - have never been trial exhibits. They have remained under seal at all times. Three of the documents - two of Mr. Hubbard's boyhood diaries and the letter to Mr. Hubbard from his ~~more~~ ^{mother KDL} were Armstrong trial exhibits, but have also remained under seal as shown by the attached Chronological History of Court Orders. The only source for these documents, was not the trial court but Gerald Armstrong (A)

himself.

SWORN at 23/28)
First St, London)
EC4)
)

Kenneth ...

This 7th day of October 1987

Before me,

Mark W. X. Cookley

*Mark Cookley
Shirer of the
Supreme Court*

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EXHIBIT G

5th : K.D. Long
Plaintiff
Sworn on 8th October 1987

IN THE HIGH COURT OF JUSTICE

1987 C No. 6140

CHANCERY DIVISION

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA

Plaintiff

-and-

(1) RUSSELL MILLER
(2) PENGUIN BOOKS LIMITED

Defendants

A F F I D A V I T

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an Executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. This affidavit is supplemental to my previous affidavits filed with this Court.

2. I have read Jonathan Caven-Atack's Third Affidavit and Mr Miller's supplemental affidavit filed with this Court yesterday, October 7, 1987.

3. Mr Caven-Atack conveniently changes his testimony of his previous affidavits and now states that he received copies of the documents from a Brenda Yates who had been given the task of making photocopies of documents in possession of Mr Armstrong's lawyer.

4. Mr Miller in his supplemental affidavit now claims, at this late hour, that he "misunderstood" how Mr Caven-Atack obtained copies of the documents. These inconsistent and last minute changes are simply an attempt to create confusion and doubt with this Court.

5. Mr Caven-Atack and Mr Miller's latest affidavits lack, as did their previous affidavits, specific facts. They still fail to identify which documents were obtained from Mrs Yates. Also, they still remain silent regarding how they obtained the documents that remained sealed during the entire course of the Armstrong trial and were never made exhibits.

6. I have read the affidavit of Earle C. Cooley dated October 8, 1987. In regard to paragraph 4 of this affidavit, I can say, based on my being in Court every day of the Armstrong trial, that none of these documents in question in this case were publicly available during the course of the trial. There were over 100 exhibits that were publicly available and not subject to any sealing order but none of these documents are included in this case and none

of them were LRH archive documents. The truth is that the documents in question were sealed throughout the entire Armstrong trial and remain sealed to this day.

7. Produced and shown before me now is exhibit "KDL 36" a true and correct copy of the affidavit of Gerald Armstrong of March 7, 1986. Mr Armstrong himself testified the following: "CSC (Church of Scientology California) sued me in August 1982 in the Los Angeles Superior Court and the documents I had sent my attorneys were ordered to be delivered to the Court where they were put under seal. Mary Sue Hubbard entered the case, hereinafter referred to as (Armstrong), as Plaintiff in Intervention in late 1982. The case went into trial in 1984 and several of the sealed documents were admitted into evidence as defense exhibits 500A-500JJJJJJ. A Judgment was entered in my favour. The exhibits and other biography documents remain under seal pending the outcome of an appeal taken by plaintiff."

The appeal referred to by Mr Armstrong is still pending in California.

8. During the course of the Armstrong trial and up until this day the Armstrong documents have been effectively under seal and protected by various Court Orders in the United States. Mr Flynn was permitted by the trial Court to use the documents only for the purpose of the Armstrong case and only during the pendency of those proceedings. The trial

court, in a 23 April 1984 hearing, specifically stated how these documents were to be treated:

"MR LITT: (Church attorney) We would also like -- Mr Flynn has not had access to these documents, assuming that the Court is now allowing him to go into them, we also would like an order that requires that he has seen these materials under seal. He may not disclose the materials or the contents of the materials for any purpose outside of the use in this proceeding. That is the order that exists presently with respect to Counsel.

"THE COURT: I don't have any problem with that, at least until the Court decides what to do with these exhibits."

"MR FLYNN: I essentially have no quarrel with that."

The Court also stated:

"THE COURT: Well, I will accept the representation by Mr Flynn that he is not going to do anything of an untoward (sic) nature that would violate the theory and the principles of what we are trying to deal with here. He is subject to the protective order.

"... and he is not to -- during the pendency of these proceedings, until further order discuss or disseminate to

other people, other than people like his client or in Court here, matters contained in the sealed records which were not in the public domain before Mr Armstrong first went to Mr Flynn or Miss Dragojevic, her firm."

9. Produced and shown before me now is exhibit "KDL 37", a July 31, 1986 declaration of Mr Michael Flynn filed in another Church case. In the case, Mr Flynn was being accused of giving out Armstrong documents to a media outlet.

Mr Flynn stated:

"In this case, of course, when we do not possess the (Armstrong Documents) it would be impossible for us to sell sealed documents to (Der Spiegel)."

10. Produced and shown before me now is exhibit "KDL 38", a true and correct copy of portions of deposition transcript of a Mr Homer Shomer, taken on 23 April 1985. Ms Julia Dargojevic, who was also trial Counsel for Mr Armstrong and who worked closely with Mr Flynn, stated:

"MS. DRAGOJEVIC: Okay. The other thing I wanted to say is that simply by turning over these documents doesn't mean we're limiting ourselves because we consider that a number of documents which were used in the Armstrong case would be applicable to this Request for Production. Unfortunately, those documents are under seal for the present, and there's nothing I can do about producing them."

11. As has been clearly shown by the facts above, Mr Armstrong and Mr Flynn testified that they have complied with the Court Orders sealing the documents in question. If Mrs Yates got the documents from Mr Flynn as Mr Miller testifies she did, or from anyone else, she did so in violation of Court Orders and also in Breach of Confidence.

12. Obviously, if Mrs Yates would have legally had the Armstrong documents in her possession, she would have distributed them the same way she distributed the trial transcripts. In Mr Miller's affidavit, he states that Mrs Yates was to "copy and immediately" distribute the documents obtained from Mr Flynn. As is shown by the facts below, Mrs Yates only distributed the trial transcripts.

13. Produced and shown before me now is exhibit "KDL 39" which is a true copy of several pages from a July/August 1984 publication entitled "The Journal of the Advanced Ability Center." Contained in the classified section of this publication is an advertisement from Brenda Yates offering for sale copies of the Armstrong Trial Transcripts. Nowhere in the ad does Mrs Yates offer the Armstrong documents which would obviously be of more interest to potential buyers than just the trial transcript.

14. Produced and shown before me now is exhibit "KDL 40" a true copy of the January/February 1985 edition of "The Journal of the Advanced Ability Center." Mrs Yate's ad

appears again in the classified section. As the Court can see there is no mention of any Armstrong documents for sale.

15. After reviewing all the facts put forth by the Plaintiff and after reading the inconsistent affidavits of Mr Miller and Mr Attack, there is no doubt that the documents in question in the suit were improperly obtained in violation of Court Orders and in Breach of Confidence.

The Church does not want to prevent the publication of Mr Miller's book, we just want the parts of the book taken from the documents in question removed and our copyright rights in the photographs protected.

SWORN at 23/28 Fleet St)
London EC4)

Kenneth David Long

this 8th day of October 1987)

Before me,

Mark W. L. Cook

A SOLICITOR

Mark Cooksey
Solicitor of the
Supreme Court

EXHIBIT H

EUGENE M. INGRAM
PRIVATE INVESTIGATOR
COMPLEX LITIGATION INVESTIGATIONS
INTERNATIONAL INVESTIGATIONS
CRIMINAL DEFENSE SPECIALIST

INGRAM INVESTIGATIONS

CALIFORNIA LICENSE AAB387

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6 Earle C. Cooley
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21 Custom House Street
8 Boston, MA 02110
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9 Kendrick L. Moxon
10 BOWLES & MOXON
6255 Sunset Boulevard,
11 Suite 2000
Hollywood, CA 90028
12 (213) 661-4030

James H. Berry, Jr.
BERRY & CAHALAN
2049 Century Park East
Suite 2750
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(213) 284-2183

13 Attorneys for Plaintiff
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 CHURCH OF SCIENTOLOGY
INTERNATIONAL,)

18 Plaintiff,)

19 vs.)

20 C. PHILLIP XANTHOS; ALAN)
LIPKIN; MARCUS OWENS; MARVIN)
21 FRIEDLANDER; S. ALLEN)
WINBORNE; ROBERT BRAUER;)
22 JOSEPH TEDESCO; CHARLES)
RUMPH; RAYMOND JUCKSCH;)
23 MELVYN YOUNG; CARL CORSI;)
GREGORY ROTH; WILLIAM)
24 CONNETT; KEITH ALAN KUHN;)
CHARLES JEGLIKOWSKI; MELVIN)
25 BLOUGH; RODERICK DARLING;)
and DOES 1 - 200,)

26 Defendants.)
27)
28)

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FILED
CLERK, U.S. DISTRICT COURT
AUG 12 1991
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

91 4301
SUV(TX)

No.

COMPLAINT FOR DAMAGES FOR AND
INJUNCTIVE RELIEF FROM:

1. FOURTH AMENDMENT VIOLATIONS;
2. FIRST AMENDMENT VIOLATIONS;
3. DUE PROCESS VIOLATIONS UNDER THE FIFTH AMENDMENT; AND
4. EQUAL PROTECTION VIOLATIONS UNDER THE FIFTH AMENDMENT.

JURY TRIAL DEMANDED

1 and October 5, 1984 and January 18 and April 22, 1985 requested
2 the applicants comment on specific allegations made by LA CID
3 informants that were at the heart of the ongoing CID
4 investigation. FOIA records and discovery in FOIA litigation
5 reveal a continuous flow of information from EO to LA CID.

6 15. It is now clear, however, that defendants and the IRS
7 were not dealing in good faith, but rather, were merely asking
8 for and receiving voluminous financial and other records from
9 plaintiff and the other churches without any intention of ever
10 granting any section 501(c)(3) exemptions and as an unlawful
11 means of obtaining data for LA CID. The use of the exemption
12 process to obtain information for a criminal investigation
13 deprived plaintiff of its rights guaranteed by the First,
14 Fourth and Fifth Amendments to the United States Constitution,
15 and violated specific IRS rules designed to protect those
16 rights. The Internal Revenue Manual contains specific
17 provisions which require EO to "immediately suspend" an inquiry
18 if EO learns that "an assigned case involves a taxpayer who is
19 the subject of a criminal investigation." The EO agents
20 responsible for plaintiff's exemption application did not
21 suspend the civil proceeding, but instead continued to use it
22 as a means for gathering information for CID.

23 16. Between 1984 and 1986, LA CID conducted an extensive
24 criminal investigation of plaintiff, other Scientology
25 churches, and individual Scientologists, under the auspices of
26 defendant Connett, the then-District Director, defendant
27 Xanthos, the LA CID Branch Chief and defendant Lipkin, the
28 assigned LA CID Group Manager. That investigation included the

1 use of mail covers, paid informants, summonses to dozens of
2 financial institutions and church members, and infiltration of
3 Scientology's ecclesiastical hierarchy. The infiltration of
4 the Church was planned as an undercover operation by the
5 LA CID along with former Church member Gerald Armstrong, who
6 planned to seed church files with forged documents which the
7 IRS could then seize in a raid. The CID actually planned to
8 assist Armstrong in taking over the Church of Scientology
9 hierarchy which would then turn over all Church documents to
10 the IRS for their investigation. The CID further coordinated
11 this plan with the Ontario Provincial Police in Canada, through
12 direct contacts and exchange of information, hoping that
13 through simultaneous assaults the "momentum of . . . charges
14 will cause [Scientology] to collapse." Thus, the documents
15 being channelled from EO to CID were being used for the
16 unlawful purpose of forwarding criminal investigations in both
17 the United States and in Canada.

18 17. That criminal investigation, the results of which
19 were ultimately rejected in full by the Department of Justice,
20 was doomed from its inception because it was based upon a
21 faulty premise -- that plaintiff and the other Churches were
22 engaging in criminal conduct (conspiracy to interfere with the
23 collection of taxes) by the mere fact that they had applied for
24 section 501(c)(3) exemptions. In other words, at the time that
25 EO was allegedly processing the exemption applications, the IRS
26 had already made a determination that the exemption
27 applications were criminal instruments because the applying
28 churches had already been prejudged as non-exempt.

1 other Scientology entities or parishioners, the harm alleged
2 herein will continue and the Constitutional violations will
3 persist to plaintiff's detriment.

4 WHEREFORE, plaintiff Church of Scientology International
5 prays that:

6 78. Defendants, and each of them, be preliminarily and
7 permanently enjoined from any and all further participation in
8 and responsibility for any matter involving the IRS and
9 plaintiff or any other Scientology Church or entity, or any
10 Scientology parishioner;

11 79. Plaintiff be awarded damages according to proof,
12 which are believed to be in excess of \$20,792,850 in
13 direct expenditures by plaintiff, and consequential and
14 resulting damages in an amount to be proven at trial, but which
15 is in an amount in excess of \$100 million, and

16 80. The Court award and order such other and further
17 relief that it deems appropriate under these circumstances.

18 Dated: August 12, 1991

Respectfully submitted,

19 QUINN, KULLY AND MORROW

20 COOLEY, MANION, MOORE &
21 JONES, P.C.

22 BERRY & CAHALAN

23 BOWLES & MOXON

24 WILLIAM T. DRESCHER

25 By: William T. Drescher
26 William T. Drescher

27 Attorneys for Plaintiff
28 CHURCH OF SCIENTOLOGY
INTERNATIONAL

8/26/91

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6 Attorneys for Defendants
7 CHURCH OF SPIRITUAL TECHNOLOGY and
RELIGIOUS TECHNOLOGY CENTER

8 Eric M. Lieberman
9 RABINOWITZ, BOUDIN, STANDARD,
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11 (212) 254-1111

RECEIVED

AUG 29 1991

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18 Attorneys for Defendant
CHURCH OF SCIENTOLOGY
19 INTERNATIONAL

Attorneys for Defendant
AUTHOR SERVICES, INC.

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA

22 VICKI J. AZNARAN and
RICHARD N. AZNARAN,
23 Plaintiffs,
24 vs.
25 CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,
26 Defendants.
27 _____
AND RELATED COUNTERCLAIMS.
28 _____

) CASE No. CV 88-1786 JMI(Ex)
)
) REPLY IN SUPPORT OF DEFENDANTS'
) MOTION FOR SUMMARY JUDGMENT
) BASED ON THE STATUTE OF
) LIMITATIONS
)
) DATE: September 9, 1991
) TIME: 10:00 a.m.
) COURTROOM: Hon. James M. Ideman

1 judgment on all of the Aznarans' claims is mandated, and this 3
2 1/2 year drain on everyone's resources will reach its proper
3 conclusion: judgment for all defendants on all counts.

4 Confronted with that insurmountable hurdle, the Aznarans,
5 their present counsel, and Joseph A. Yanny, defendants' former
6 counsel and the Aznarans' de facto counsel, responded
7 predictably. They once again change and contradict their earlier
8 sworn testimony to "support" never-before alleged legal theories
9 conjured up to meet the exigencies of the moment.

10 On February 20, 1991, defendants filed a motion asking the
11 Court to order the Aznarans and their counsel not to indulge
12 further in their habitual changing of their sworn versions of the
13 facts and the legal theories of their case. That motion was
14 necessitated by the Aznarans continuously supplying declarations
15 that were at odds with their earlier sworn testimony and because
16 their counsel changed their legal theories each time he was
17 called upon to articulate them, to the point that even their
18 legal theories were in conflict. That motion remains under
19 submission. Now, faced with meritorious motions for summary
20 judgment, the Aznarans have once again changed the facts,
21 contradicted their earlier testimony, created an entirely new
22 story concerning their case and again redefined their theories.

23 The Aznarans' and their counsel's repositioning of the facts
24 and the legal theories they espouse is hardly surprising for two
25 reasons. First, as set forth in defendants' February 20, 1991
26 motion papers on this point, they have done so throughout this
27 entire litigation. Second, and even more telling, the utter
28 disregard of the truth that the Aznarans have made the trademark

1 of their litigation effort, bears the unmistakable signature of
2 Gerald Armstrong, whose theory of litigating against Churches of
3 Scientology, as captured on videotape in 1984, is not to worry
4 about what the facts really are, but instead to choose a state of
5 "facts" that should survive a challenge by the Church and "just
6 allege it." [Declaration of Earle C. Cooley, Ex. F].

7 It is clear that Armstrong's influence and philosophy
8 permeates the Aznarans' oppositions. Armstrong was in the office
9 of the Aznarans' counsel, Ford Greene, for most of the week in
10 which the Aznarans' opposition were created. [Ex. E, Declaration
11 of Sam Brown, ¶ 3]. On August 19, 1991, Armstrong admitted to
12 one of defendants' counsel that he was at Greene's office
13 "helping out." [Ex. B, Declaration of Laurie J. Bartilson.]
14 Even more disturbingly to a Court that disqualified Barry Van
15 Sickie as counsel for the Aznarans because his presence
16 represented an improper "extension of Yanny" into these
17 proceedings and disqualified Yanny himself because his presence
18 was "highly prejudicial" to defendants, Armstrong is a paralegal
19 who was hired by Yanny to work on the Aznaran case [Transcript of
20 Proceedings, August 6, 1991, at 25, Ex. 1 to Ex. B, Declaration
21 of Laurie Bartilson] and thus had no business being anywhere near
22 the opposition because: (1) Yanny was disqualified from
23 representing the Aznarans here; and (2) Yanny has been
24 preliminarily enjoined from directly or indirectly representing
25 the Aznarans [Reporter's Transcript of August 6, 1991, at 34].

26 In essence, the facts demonstrate and the Aznarans admit
27 that they long knew of their purported injuries, but that the
28 limitations period did not begin to run until they had come to

1 1987 and received a low-interest loan of \$20,000 and letters of
2 recommendation for future employment, which Ms. Aznaran stated
3 were "good consequences" of leaving. V.A. Dep. at 1185.

4 This situation contrasts sharply with Wyatt. The key point
5 in Wyatt is that even after the plaintiffs learned of the fraud,
6 and even after they had hired attorneys, there was no way to get
7 out of their legal and economic obligations to defendants prior
8 to judicial action. Thus in Lewelling v. Farmers Ins. of
9 Columbus, Inc., 879 F.2d 212 (6th Cir. 1989), the court, in
10 applying California law, made clear that Wyatt is an unusual
11 exception to the general rule that a fraud claim "begins to run
12 when an individual becomes aware of fraudulent harm." Id. at 217.
13 For the Wyatt exception to apply there must be "evidence . . .
14 that sheer economic duress or overpowering influence rendered
15 plaintiffs incapable of acting to protect their legal rights."
16 Id. Nothing of the kind is present here. When the Aznarans
17 decided to leave their staff positions but remain Scientologists
18 in good standing, they did just that, without violating any legal
19 or economic obligations. Wyatt, therefore, is wholly
20 inapplicable.

21 IV. THE COURT SHOULD DISREGARD THE REMAINDER OF THE OPPOSITION

22 As detailed in the Preliminary Statement, supra, the real
23 thrust of the Aznarans' Opposition is not the foregoing,
24 ineffectual legal contentions, but rather the "just allege it"
25 philosophy of Yanny's paralegal, Gerald Armstrong, Yanny's
26 continuing involvement despite this Court's explicit order, and
27 the willingness of the Aznarans and their counsel to say anything
28 at any time to try to breathe life into their false and moribund

1 claims. Armstrong's "helping out" while the Opposition was
2 concocted not only reveals the continuing taint of Yanny's
3 involvement with this case, it establishes the guiding principle
4 that resulted in an Opposition that avoids cogent analysis of
5 pertinent law and fact and instead seeks to prejudice the Court
6 to the point of overlooking the motion, the relevant matters, and
7 the fact that the Aznarans have all but expressly conceded that
8 all their claims are time-barred.

9 Armstrong's philosophy of litigation is that facts and the
10 truth are irrelevant and that all that is required to prevail is
11 to allege whatever needs to be alleged is spelled out in a
12 videotape of Armstrong made in 1984 as part of a police-
13 authorized private investigation of individuals, including
14 Armstrong, who attempted to seize control of the Church. [Cooley
15 Dec., ¶ 4] In that tape, in the context of a discussion of
16 attempting to prove facts in a civil proceeding where evidence
17 was unavailable, Armstrong (under the mistaken belief that he was
18 speaking with an ally) stated what a civil litigant should do
19 when faced with a lack of evidence:

20 They can allege it. They can allege it.

21 They don't even have -- they can allege it.

22 * * *

23 Fucking say the organization destroys the
24 documents.

25 * * *

26 Where are the -- We don't have to prove a
27 goddamn thing. We don't have to prove shit;
28 we just have to allege it.

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20
21 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 VICKI J. AZNARAN and) CASE No. CV 88-1786 JMI(Ex)
23 RICHARD N. AZNARAN,)
24 Plaintiffs,) SUPPLEMENTAL MEMORANDUM IN SUPPORT
v.) OF DEFENDANTS' MOTION TO DISMISS
25 CHURCH OF SCIENTOLOGY OF) COMPLAINT WITH PREJUDICE;
26 CALIFORNIA, et al.,) DECLARATIONS OF SAM BROWN, THORN
27 Defendants.) SMITH, EDWARD AUSTIN, LYNN R.
AND RELATED COUNTERCLAIMS.) FARNY AND LAURIE J. BARTILSON
28)
DATE: To be determined
TIME: To be determined
COURTROOM: Hon. James M. Ideman

RECEIVED

AUG 29 1991

HUE LAW OFFICES

1 to have a courier pick up the oppositions, the telephone was
2 answered by a person who identified himself as Gerald Armstrong
3 ("Armstrong"). (Ex. F, Declaration of Laurie J. Bartilson,
4 para. 3.) When queried as to his presence there, Armstrong
5 stated that he was "helping out." (Id.) Additional papers
6 were late-filed with the Court by Greene on August 23, and not
7 surprisingly, Armstrong's presence at Greene's office continued
8 after the August 19 filings for several more days. (Ex. D,
9 Declaration of Sam Brown, para. 3.)

10 Armstrong has recently been identified as a paralegal
11 hired by Yanny to work with him on this case. Yanny
12 represented in argument to Los Angeles Superior Court that he
13 had "hired Armstrong as a paralegal to help [him] on the
14 Aznaran case." (Ex. G, Reporter's Transcript of August 6,
15 1991, at 25.) Armstrong confirmed this characterization, as did
16 Yanny in a declaration. (Ex. B, Declaration of Joseph A.
17 Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald
18 Armstrong, July 19, 1991, para. 4.) As Armstrong is Yanny's
19 paralegal on this case, his new affiliation as an assistant to
20 Ford Greene is truly outrageous. Not only has Yanny been
21 disqualified point blank by the Court from representing the
22 Aznarans, he has also been forbidden from directly or
23 indirectly acting as counsel against defendants on behalf of
24 the Aznarans or Gerald Armstrong by preliminary injunction
25 entered on August 6 at the hearing in which the statement was
26 proffered that Armstrong was his paralegal on this case.
27 Religious Technology Center, et al. v. Yanny, et al.,
28 Case No. BC 033035. (Ex. G, Transcript of August 6, 1991, at

1 3-4.)

2 This Court disqualified attorney Barry Van Sickle from
3 representing plaintiffs as being "an extension of Joseph
4 Yanny's continuing involvement in the instant action." (slip.
5 op. September 6, 1988). Here again, Yanny's involvement in
6 this case continues, this time through a different "extension"
7 -- the improper activities of Yanny's paralegal, Gerald
8 Armstrong, whose actions are just as improper as they would be
9 if done by a lawyer. In re Complex Asbestos Litigation 91
10 D.A.R. 8849 (1991).

11 That Armstrong is amenable to the kind of covert
12 representation in which Yanny is engaging in this case is
13 highlighted by his recorded remarks made in November 1984. At
14 that time, Armstrong was plotting against the Scientology
15 Churches and seeking out staff members in the Church who would
16 be willing to assist him in overthrowing Church leadership. The
17 Church obtained information about Armstrong's plans and,
18 through a police-sanctioned investigation, provided Armstrong
19 with the "defectors" he sought. On November 30, 1984, Armstrong
20 met with one Michael Rinder, an individual whom Armstrong
21 thought to be one of his "agents" (but who in reality was loyal
22 to the Church). In the conversation, recorded with written
23 permission from law enforcement, Armstrong stated the following
24 in response to questions by Mr. Rinder as to whether they had
25 to have actual evidence of wrongdoing to make allegations
26 in Court against the Church leadership:

27 ARMSTRONG: They can allege it. They can allege
28 it. They don't even have -- they can allege it.

1 RINDER: So they don't even have to -- like -- they
2 don't have to have the document sitting in front
3 of them and then --

4 ARMSTRONG: Fucking say the organization destroys
5 the documents.

6 * * *

7 Where are the -- we don't have to prove a goddamn
8 thing. We don't have to prove shit; we just have
9 to allege it.

10 (Ex. E, Declaration of Lynn R. Farny, para. 6.) With such
11 a criminal attitude, Armstrong fits perfectly into Yanny's game
12 plan for the Aznaran case.

13 It is apparent that Yanny's disqualification from this
14 case has simply driven him back underground. He challenged the
15 Court by appearing directly in this case and lost. So he now
16 sends his paralegals to aid Greene in his prosecution of the
17 case, thereby doing indirectly what this Court and the Los
18 Angeles Superior Court have forbidden him to do at all. Greene
19 and the Aznarans are obviously aware that the Court
20 disqualified Yanny and ruled his participation in this case to
21 be "highly prejudicial to Defendants" because of Yanny's former
22 representation of defendants. This was the same order which
23 removed Yanny and put Greene back into the case as plaintiffs'
24 counsel. Thus, the Aznarans, their former attorney and their
25 present attorney are equally culpable for permitting Yanny to
26 continue his participation in this case to the adjudicated

27 ///

28 ///

EXHIBIT L

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AUG 30 1991

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Attorneys for Defendant
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and) CASE No. CV 88-1786 JMI(Ex)
RICHARD N. AZNARAN,)
Plaintiffs,) DEFENDANTS' OPPOSITION TO EX PARTE
v.) APPLICATION TO FILE PLAINTIFFS'
CHURCH OF SCIENTOLOGY OF) GENUINE STATEMENT OF ISSUES [SIC]
CALIFORNIA, et al.,) RE DEFENDANTS' MOTIONS (1) TO EXCLUDE
Defendants.) EXPERT TESTIMONY; AND (2) FOR
AND RELATED COUNTERCLAIMS) SEPARATE TRIAL ON ISSUES OF
COURTROOM: Hon. James M. Ideman

00 096

1 Defendants oppose plaintiffs' Ex Parte Application to
2 File Plaintiffs' Oppositions to Defendants' Motion to Exclude
3 Expert Testimony and For Separate Trial on Issues of Releases
4 and Waivers, and request that these late-filed papers be
5 stricken.

6 In defendants' notice of plaintiffs' non-compliance with
7 mandatory pretrial procedures, filed and served on August 9,
8 1991, defendants demonstrated that, throughout this litigation,
9 plaintiffs have engaged in an "unswerving pattern of
10 non-compliance and campaign of delay." [Notice of Non-Compliance
11 at 3]. Defendants therein documented for the Court a pattern by
12 plaintiffs and their counsel of late filings, no filings,
13 incomplete filings, filings that did not comply with the Federal
14 Rules and filings that did not comply with the Local Rules,
15 and the utilization of defendants' former counsel and lawyers
16 associated with defendants' former counsel. Despite the
17 pendency of that Notice, plaintiffs have, yet again, repeated
18 the same contempt for this Court's orders and procedures which
19 they have demonstrated throughout.

20 This Court has already made it clear to plaintiffs that
21 their oppositions to the pending motions were due for filing no
22 later than August 19, 1991. In just this single week,
23 plaintiffs violated this Court's orders and the Local Rules by:

24 (1) Filing oversized oppositions to defendants'
25 two summary judgment motions. These oppositions
26 were numerated to be 40 and 50 pages in length, but
27 were accompanied by a 53-page "Appendix of Fact,"
28

1 thus making the actual size of the two opposition
2 papers 93 and 103 pages;^{1/}

3 (2) Failing to file Statements of Genuine
4 Issues of Fact with their memoranda opposing the
5 summary judgment motions;

6 (3) Attempting to late-file Statements of
7 Genuine Issues of Fact on Friday, August 23, 1991,
8 giving defendants no opportunity to respond to
9 those Statements with defendants' replies, due to
10 be filed on Monday, August 26, 1991;

11 (4) Failing to oppose in a timely fashion four
12 other pending motions;

13 (5) Failing to file a Pretrial Conference
14 Memorandum of Contentions of Fact and Law, due with
15 the Court on August 26, 1991 pursuant to Local Rule
16 9.5; and

17 (6) Preparing all of those papers with the
18 aid of one Gerald Armstrong, who was hired by
19 Joseph Yanny to act as Yanny's paralegal on
20 this very case. [Ex. A, Declaration of Laurie J.
21 Bartilson; Ex. B, Transcript of Hearing of August
22 6, 1991 in Religious Technology Center v.

23
24 1. The Court is reminded that defendants attempted to file
25 moving papers in support of one of the motions at issue that
26 was 103 pages in length, and their ex parte request for
27 permission to do so was denied. That memorandum of points and
28 authorities was accordingly reduced to 49 pages. Had
plaintiffs sought to file a comparably-sized memorandum, no
opposition would have been lodged by defendants. However,
defendants do object to the 93- and 103-page memoranda
submitted by plaintiffs via subterfuge.

1 Yanny, LASC Case No. BC 033035, p. 25].

2 Plaintiffs now seek leave to late-file oppositions to two
3 of the motions which they have failed to oppose. They ask to do
4 so on the very day that defendants' replies to those oppositions
5 would be due for filing with the Court, and on a date only 21
6 days before the scheduled pretrial conference. Plaintiffs,
7 however, can demonstrate no good cause why they continue to
8 refuse to abide by this Court's specific orders and the Local
9 Rules. As such, their ex parte application must be denied,
10 and the lodged oppositions ordered stricken.

11 The burden is on the moving party to demonstrate good
12 cause if he seeks to have more time in which to file papers.
13 Local Rule 1.18. Here, plaintiffs already requested more time,
14 and were granted until August 19, 1991 by this Court. Their
15 request to have until August 26, 1991 to file these very
16 papers was already denied by the Court on August 9, 1991.

17 The moving party is required to present his reasons for
18 seeking the ex parte application, and a memorandum of points
19 and authorities in support thereof. Plaintiffs have done
20 neither. Instead, they offer a declaration of their counsel,
21 which states merely that he and his new co-counsel require more
22 time than the Court was previously willing to give them in order
23 to respond to defendants' motions. Plaintiffs' counsel does
24 not inform the Court, however, that in the preparation of these
25 and other papers, he has been aided by none other than Gerald
26 Armstrong. [Ex. A, Declaration of Laurie J. Bartilson]. Arm-
27 strong is employed by Joseph Yanny as a paralegal on this very
28

1 case. [Ex. B, p. 25]. For him to now have switched his aid
2 to Greene's office further taints all of the papers filed by
3 Greene, and is grounds for disqualification of Greene himself as
4 well. See, In re Complex Asbestos Litigation (1991) 91
5 D.A.R. 8849 (Requiring disqualification of plaintiff's law firm
6 for the hiring of a paralegal formerly employed by defendant's
7 lawyers). Greene's complaint that he has been unable to follow
8 this Court's orders, even with the improper aid of Gerald
9 Armstrong, is thus a completely hollow argument. It is plain
10 that plaintiffs and their counsel have nothing but contempt for
11 this Court, its Rules and its Orders.

12 This is merely the latest episode in plaintiffs'
13 "persistent pattern of abusive conduct," Chism v. National
14 Heritage Life Ins. Company, 637 F.2d 1328, 1331 (9th Cir.
15 1981), which defendants and the Court have tried in vain to
16 cure. The schedule set by the Court was clear and concise,
17 plainly designed to permit the Court to rule on pending matters
18 prior to the Pretrial Conference, now set for September 16,
19 1991. Plaintiffs' refusal to comply with this clear order, and
20 instead late-file oppositions willy-nilly, is inexcusable.
21 The language of the Ninth Circuit in dealing with a similar case
22 which arose in this very district is hauntingly appropriate:

23 Chism or his attorneys continually flouted
24 discovery rules, failed to comply with pretrial
25 conference obligations, and repeatedly violated the
26 local rules of court.^{2/} This conduct continued even

27 2. Defendants pointed out in the Notice on August 9, 1991,
28 that plaintiffs' counsel refused to attend the 40-day meeting
of counsel mandated by Local Rule 9.4, which is critical to a
(footnote continued)

DECLARATION OF LAURIE J. BARTILSON

1
2 I, LAURIE J. BARTILSON, hereby declare and state:

3 1. I am co-counsel of record for plaintiffs in the
4 case of Aznaran v. Church of Scientology of California,
5 et al., Case No. CV 88-1786 JMI(Ex). I have personal
6 knowledge of the matters set forth herein and, if called upon
7 to do so, could and would competently testify thereto.

8 2. On August 19, 1991, I called the offices of Ford
9 Greene, counsel for plaintiffs in this case, to arrange to have
10 a courier pick up several oppositions which plaintiffs were due
11 to file that day.

12 3. The person who answered the telephone in Mr. Greene's
13 office identified himself as Gerald Armstrong. When queried,
14 Armstrong stated that he was at Greene's office "helping out."
15 I know Armstrong, as I attended his deposition in another case
16 in which I am also counsel. He is a long-term litigation
17 adversary of my client, Church of Scientology of California,
18 having been sued for conversion of documents belonging to the
19 Church's Founder.

20 4. I have been informed by private investigators hired by
21 my law firm that Armstrong was present at Ford Greene's offices
22 many times from August 3, 1991 through at least August 21, 1991,
23 often for hours and days at a time. When my courier went to
24 Greene's offices on August 19, 1991 to pick up papers in this
25 case, he observed Armstrong sleeping on the floor in the office.

26 5. Exhibit 1 to the Reply in Support of Defendants'
27 Motion for Summary Judgment is a true and correct copy of
28 a transcript of an August 6, 1991 hearing in the case of

1 Religious Technology Center, et al. v. Yanny, Case No. BC
2 033035. In that case, Yanny was preliminarily enjoined by the
3 Court from representing either the Azarans or Armstrong.

4 I declare under the penalties of perjury under the laws of
5 California and the United States of America that the foregoing
6 is true and correct.

7 Executed this 27th day of August at Los Angeles,
8 California.

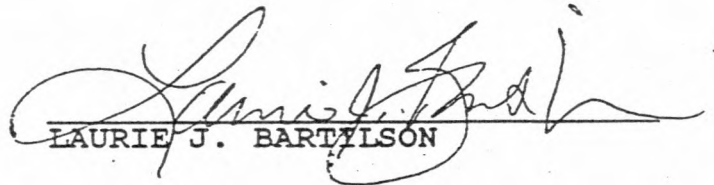
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10 
11 LAURIE J. BARTYLSON
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EXHIBIT M

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7
8 Attorneys for Defendants
9 AUTHOR SERVICES, INC.

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 BENT CORYDON,) CASE NO. C 694 401
14)
15 Plaintiff,)
16 vs.)
17)
18 CHURCH OF SCIENTOLOGY)
19 INTERNATIONAL, INC.,)
20 etc. et al.,)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)
AND RELATED CROSS-ACTIONS)
SUPPORT THEREOF)

DATE: November 16, 1989
TIME: 9:00 a.m.
DEPT: 44

TO: PLAINTIFF AND HIS ATTORNEYS OF RECORD HEREIN.

PLEASE TAKE NOTICE that on November 16, 1989 at 9:00 a.m.,
or as soon thereafter as counsel can be heard, in Department 44
of the above-entitled Court located at 111 North Hill Street,
Los Angeles, California, defendant AUTHOR SERVICES, INC.
("defendant ASI" hereinafter) will move the Court for an order
to restrain plaintiff from taking certain third party
depositions.

1 This application is made on the ground that great and
2 irreparable harm will result to defendant ASI unless a
3 restraining order is issued enjoining plaintiff from taking
4 certain third party depositions, or conditioning those
5 depositions upon a showing of relevance.

6 This Motion will be based upon this Notice, the attached
7 Memorandum of Points and Authorities, the pleadings, records and
8 files in this action, and such evidence as may be presented at
9 the hearing of the Motion.

10 Dated: October 7th, 1989

11 TURNER, GERSTENFELD, WILK & TIGERMAN

12
13 BY: *L. Heller*

14 Lawrence E. Heller
15 Attorneys for Defendants
16 AUTHOR SERVICES, INC.
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1 virtually all of the "Wollersheim-like" cases (where former
2 Scientology staff members or parishioners instituted litigation
3 against Scientology). Those settlements alleviated the truly
4 gargantuan time and financial resources which would have been
5 wasted in the absence of such a settlement. To effect these
6 settlements also required an exercise of good faith on behalf of
7 adverse litigants and attorneys who had been fiercely battling
8 for a number of years prior to entering into the settlements.

9 One of the key ingredients to completing these settlements,
10 insisted upon by all parties involved, was strict
11 confidentiality respecting: (1) the Scientology parishioner or
12 staff member's experiences within the Church of Scientology; (2)
13 any knowledge possessed by the Scientology entities concerning
14 those staff members or parishioners; and (3) the terms and
15 conditions of the settlements themselves. Peace has reigned
16 since the time the interested parties entered into the
17 settlements, all parties having exercised good faith in carrying
18 out the terms of the settlement, including the obligations of
19 confidentiality.

20 Comes now the plaintiff herein, BENT CORYDON, and acting
21 the role of a one man wrecking crew, he serves multiple
22 subpoenas in a wholesale manner upon these former plaintiffs
23 (and in some cases defendants); seeking material totally
24 irrelevant to the issues involved in his litigation.

25 Without any question, CORYDON's intent in serving these
26 various subpoenas requesting depositions and the production of
27 documents is to drive a wedge between these settling parties, in
28 an illegal attempt to extort a settlement of his own from the

1 defendants herein. Even a glance at the Request for Documents
2 served as part of CORYDON's subpoena duces tecum re deposition
3 upon these settling parties indicates that he has no interest in
4 any issues respecting plaintiff's case. Rather, CORYDON appears
5 to be on a mission to torpedo what can only be characterized as
6 good faith, effective settlements which have alleviated a vast
7 burden upon this Court." (See subpoena served upon one Homer
8 Schomer, an individual who had sued various Scientology entities
9 and this moving defendant in the Federal Court of the Central
10 District of California, attached hereto as Exhibit "A"¹).

11 Attached to these moving papers is the declaration of one
12 of the litigants who settled against Scientology, the aforesaid
13 Homer Schomer. Mr. Schomer's declaration, conclusively exhibits
14 that he has no evidence concerning CORYDON or CORYDON's
15 relationship with any Scientology entity, is perhaps the best
16 evidence of CORYDON's bad faith in attempting to effect the
17 subject deposition discovery.

18 The other third parties CORYDON has subpoenaed to deposition
19 that ASI knows of have even less information concerning CORYDON.
20 For instance one of the potential deponents who CORYDON has been
21 trying to serve is attorney Michael J. Flynn, a Boston lawyer
22 involved in most of the settlements which transpired some two
23 and one-half (2-1/2) years ago.

24 ///

25
26 ¹Even a cursory review of the documents requested in Mr.
27 Schomer's subpoena indicate that they have nothing to do with Mr.
28 CORYDON's case. They relate solely to the Settlement Agreement
and documents attendant to that settlement. It is inconceivable
that any of these documents could be relevant, even pursuant to
discovery standards, to any issue in the instant litigation.

1 CORYDON and his attorney, Toby L. Plevin, obviously feel
2 that they have hit upon a weak spot within the Church of
3 Scientology's resolve to effectively defend this litigation.
4 Their tactic is to illegally threaten to compel by subpoena
5 disclosure of confidential material irrelevant to the issues in
6 his case. The fact that CORYDON's and Ms. Plevin's litigation
7 tactics are in bad faith and an abuse of this Court's process
8 appears to be of no avail to them.

9 CORYDON has been in litigation with most of the defendants
10 herein for approximately eight (8) years. CORYDON sought
11 dismissal of the litigation which he had previously instituted
12 in the County of Riverside prior to the time that it was to go
13 to trial in that Court, after he had litigated that case for
14 over five (5) years. CORYDON thereafter instituted this
15 litigation, clearly once again with no intent of going to trial
16 on the merits, but rather in an attempt to "blackmail" these
17 defendants through an attack upon the good faith settlements
18 into which they had previously entered.

19 This moving party, (AUTHOR SERVICE, INC.) which was a party
20 to at least one of the aforementioned settlements beseeches this
21 Court to prevent CORYDON and/or his attorney from engaging in
22 these unethical tactics under the guise of free wheeling
23 discovery. These parties would ask this Court to issue a
24 protective order preventing these depositions from going forward

25 ///

26 ///

27 ///

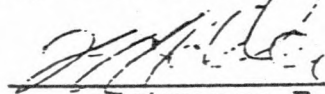
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at least until CORYDON and his attorney have exhibited the
relevance of these depositions.

Dated: October 24, 1989

TURNER, GERSTENFELD, WILK & TIGERMAN

BY: 

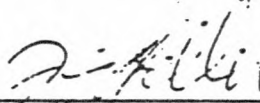
Lawrence E. Heller
Attorneys for Defendants
AUTHOR SERVICES, INC.

1 instances, sometimes contentious. However, a "universal
2 settlement" was ultimately entered into between the numerous
3 parties. The universal settlement provided for non-disclosure
4 of all facts underlying the litigation as well as non-disclosure
5 of the terms of the settlements themselves. The non-disclosure
6 obligations were a key part of the settlement agreements
7 insisted upon by all parties involved.

8 4. The contractual non-disclosure provisions were the one
9 issue which was not debated by any of the parties or attorneys
10 involved. In the last two and one half (2-1/2) years the
11 settlements have been carried out in good faith by all parties.
12 I consider my contribution, as well as the contribution of the
13 other attorneys involved in the settlements, to have been of
14 great benefit to this and other Courts in that it alleviated
15 literally months upon months of trial time which would have been
16 necessary had the settlements not been properly effected.

17 I declare under penalty of perjury that the foregoing is
18 true and correct.

19 Executed this 17 day of March 1989, at Beverly Hills,
20 California.

21 
22 _____
23 Lawrence E. Heller
24 Declarant
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27
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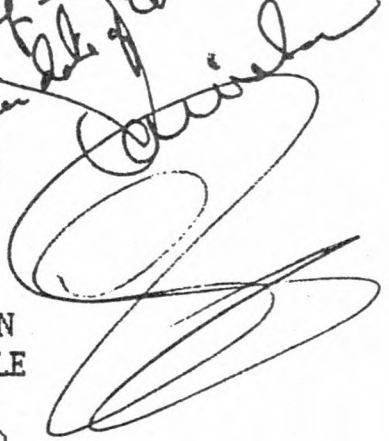
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Permission to file respondent's brief GRANTED

Time to file respondent's brief extended to 60 days after date of this order.



3-22-90

COURT OF APPEAL - SECOND DIST.

FILED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FEB 28 1990

SECOND APPELLATE DISTRICT

RT N. WILSON Clerk

DIVISION THREE

Deputy Clerk

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,
 Plaintiffs-Appellants,
 v.
 GERALD ARMSTRONG,
 Defendant-Respondent
 MARY SUE HUBBARD
 Intervenor.

)
) Case No. B025920
)
) LASC No. C420153
)
)
) RESPONDENT'S PETITION
) FOR PERMISSION TO FILE
) RESPONSE AND FOR AN
) EXTENSION OF TIME TO
) FILE RESPONSE
)
)
)

I am the respondent Gerald Armstrong. I am petitioning this court at this time for permission to file a respondent's brief in this appeal and for an extension of time in which to file a respondent's brief or other appropriate document.

1. Permission to File:

The unusual need for this court's permission to file a respondent's brief arises from a condition contained in a document entitled MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT signed by me December 6, 1986, a copy of which is attached hereto in a sealed envelope as Exhibit A. I have no objection to this document being unsealed.

Para. 4A of the settlement agreement allowed appellants to maintain their appeal, no. B005912, which had been filed in 1984, although the case

was ostensibly settled. Para. 4B contains the condition that I "waive any rights [I] may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology of California."

I have recently become convinced that it would be a fraud upon this court to not advise it that the respondent is prohibited from filing a brief. I am also now convinced that my right to file a respondent's brief is not something that can be taken away by such a settlement agreement.

I have discovered, moreover, that "the failure to file respondent's brief imposes an unnecessary burden on [the] court, and at least raises the inference that respondent concedes that the appeal is meritorious," Sowell v. Sowell, 164 Cal. App. 2d 371, 330 P.2d 391 (1958), Yarbrough v. Yarbrough, 144 Cal. App. 2d 610, 301 P. 2d 426 (1956); that the court "may assume . . . that the respondent has abandoned any attempt to support the judgment, and . . . may also assume that the points made by the appellant are meritorious," Roth v. Keene, 256 Cal. App. 2d 725, 64 Cal. Rptr. 399 (1967); and that the court "shall regard with disfavor the failure of a respondent in any case to assist the court by means of an answering brief," James v. James, 125 Cal. App. 2d, 417, 270 P.2d, 538 (1954).

I am therefore requesting this court's permission to file a respondent's brief, motion for dismissal or other responsive document.

2. Extension of Time to File:

I received Appellants' Brief and Appellants' Supplemental Appendix in Lieu of Clerk's Transcript from Flynn, Sheridan & Tabb on January 18, 1990. I have not yet received Appellants' Appendix.

I am not an attorney and I am not represented by legal counsel in any Scientology matters at this time. Neither Flynn, Sheridan & Tabb nor Contos & Bunch, both of which firms represented me throughout the litigation of

this case in the lower court, will be representing me in this appeal. It is my intention to retain an attorney to represent me in this appeal if at all possible.

Appellants had five and a half years from the date the trial court issued its Decision to the date they filed their brief.

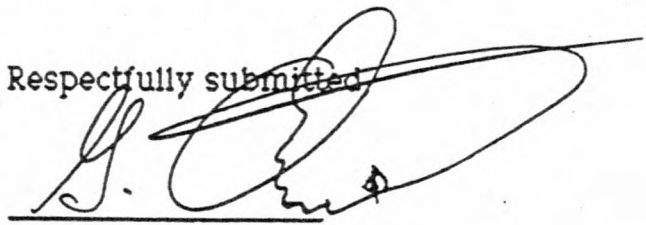
Appellants have filed another appeal, entitled Church of Scientology of California and Mary Sue Hubbard, Appellants, against Gerald Armstrong, Defendant, Bent Corydon, Appellee, Civ. No. B 038975 in Division Four in the Second Appellate District, which has its genesis in the same case underlying this appeal, Super. Ct. No. C420153, and concerns many of the same facts and issues as this appeal. I am at this time also petitioning the Division Four Court for permission to respond in that appeal.

There remain a number of issues springing from the settlement agreement, appellants' actions in violation of the agreement, and appellants' obstructive and threatening use of the agreement, which this court does not have to consider in order to grant my petition, but which I will be addressing as soon as possible by motion or other appropriate action in the Los Angeles Superior Court, which retains, pursuant to clause 20 of the settlement agreement, jurisdiction to enforce its terms.

I therefore request 90 days from the date of this court's granting of this petition in which to file a respondent's brief or other responsive document.

DATED: February 20, 1990

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Armstrong', written over a horizontal line.

GERALD ARMSTRONG

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 7140 Buckingham Blvd., Berkeley, CA 90475.

On February 20, 1990 I caused to be served the foregoing document described as RESPONDENT'S PETITION TO FILE RESPONSE AND FOR AN EXTENSION OF TIME TO FILE RESPONSE on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Oakland, California, addressed to the persons and addresses specified on the service list attached.

Executed on February 20, 1990 at Oakland, California.

SERVICE LIST

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE
3580 Wilshire Blvd., Room 301
Los Angeles, California 90010

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JULIA DRAGOJEVIC, ESQ.
CONTOS & BUNCH
5855 Topanga Canyon Blvd., #400
Woodland Hills, California 91367

CLERK OF THE SUPERIOR COURT
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Los Angeles, California 90012